

Lori Smith, 3/18/2014

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1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF OHIO  
3                   WESTERN DIVISION  
4     HEALTHY ADVICE       :  
5     NETWORKS, LLC,       :  
6     :                   :  
7     Plaintiff,        :  
8     :                   :  
9     vs.                :                   Case No. 1:12CV610  
10                   :  
11                   CONTEXTMEDIA, INC.,       :  
12                   :  
13                   Defendant.       :  
14

15                   Deposition of LORI SMITH, a witness  
16                   herein, taken by the defendant as upon  
17                   cross-examination, pursuant to the Federal  
18                   Rules of Civil Procedure and pursuant to  
19                   notice of counsel as to the time and place  
20                   and stipulations hereinafter set forth, at  
21                   the offices of Keating Muething & Klekamp,  
22                   PLL, One East Fourth Street, Suite 1400,  
23                   Cincinnati, Ohio 45202, at 12:23 p.m.,  
24                   Tuesday, March 18, 2014, before ANN M.  
25                   BELMONT, RPR, a Registered Professional  
26                   Reporter and Notary Public within and for the  
27                   State of Ohio.

28                   - - -  
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1 APPEARANCES:

2

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## 1 STIPULATIONS

2           It is stipulated by counsel for the  
3 respective parties that the deposition of  
4 LORI SMITH, a witness herein, may be taken at  
5 this time by the defendant as upon  
6 cross-examination and pursuant to the Federal  
7 Rules of Civil Procedure and notice to take  
8 deposition, all other legal formalities being  
9 waived by agreement; that the deposition may  
10 be taken in stenotype by the Notary Public  
11 Reporter and transcribed by her out of the  
12 presence of the witness; that the transcribed  
13 deposition was made available to the witness  
14 for examination and signature and that  
15 signature may be affixed outside the presence  
16 of the Notary Public-Court Reporter.

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1                   LORI SMITH,  
2                   a witness herein, of lawful age, having  
3   been first duly sworn as hereinafter  
4   certified, was examined and testified as  
5   follows:

6                   CROSS-EXAMINATION

7   BY MR. O'BRIEN:

8                 Q.     State your full name, please.

9                 A.     Lori Ann Smith.

12:23 10               Q.     We just met. My name is Dick  
11       O'Brien, I represent ContextMedia, a company  
12       that's been sued by your employer, Healthy  
13       Advice Networks, you understand that, right?

14               A.     Correct.

15               Q.     And your lawyer's told you I'll  
16       be asking you a series of questions today,  
17       right?

18               A.     Correct.

19               Q.     If at any point in time you  
12:23 20       don't understand one of my questions or it's  
21       not clear to you, let me know that and I'll  
22       try to fix it, okay?

23               A.     Yes.

24               Q.     Otherwise, if you go ahead and

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1 answer, we're going leave the room at the end  
2 of the deposition assuming you understood the  
3 question; is that fair?

4 A. Yes.

5 (Exhibit 1 identified.)

6 Q. I'm going to show you what was  
7 marked in an earlier deposition as  
8 Defendant's Exhibit 1. Put that before you,  
9 and you can look at whatever portions you  
12:24 10 want to, but I'm going to turn your attention  
11 to page 3, and there's a list of topics  
12 there, do you see that?

13 A. Yes.

14 Q. And you've seen this before, I  
15 take it?

16 A. Yes.

17 Q. And as I understand it, you are  
18 here to testify on behalf of HAN, the  
19 company, as to topics 2, 3, and 8, does that  
12:24 20 square with your understanding?

21 A. Yes.

22 Q. And 2 is the following, "For  
23 each HAN practice that HAN contends switched  
24 from HAN to Context, the reasons why the HAN

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1 practice did so," do you see that?

2 A. Em-hm.

3 Q. And you've agreed and are  
4 prepared today to testify on behalf of the  
5 company as to that topic, correct?

6 A. Correct.

7 Q. And with respect to 3, "For each  
8 HAN practice that switched from HAN to a  
9 competitor that is not Context, the reasons  
12:25 10 why the HAN practice did so," do you see  
11 that?

12 A. Yes.

13 Q. And you've agreed or are  
14 appearing here today to give me knowledge of  
15 the company on that topic, correct?

16 A. Correct.

17 Q. And lastly, and I won't read all  
18 of it because it's kind of lengthy, but topic  
19 8 has to do with HAN's practices and  
12:25 20 procedures regarding removing, handling the  
21 disposition of HAN's equipment, right?

22 A. Correct.

23 Q. And you've agreed to appear here  
24 to provide the information within HAN's

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1 knowledge on that topic, right?

2 A. Correct.

3 Q. So let's take these one at a  
4 time going backwards. With respect to topic  
5 2, Ms. Smith, tell us what you did to prepare  
6 and conduct an investigation with respect to  
7 HAN's knowledge on that topic.

8 A. I went through our spreadsheet  
9 of offices that have switched to Context just  
12:26 10 to refresh my memory of those practices that  
11 switched.

12 Q. And anything else that you can  
13 recall?

14 A. That's -- no.

15 Q. Did you look at any e-mails for  
16 example?

17 A. I did not look at any e-mails  
18 on -- no.

19 Q. Did you interview any HAN  
12:26 20 employees?

21 A. No.

22 (Exhibit 17 identified.)

23 Q. Let's mark this as Exhibit 17.

24 I have now handed you and your counsel what's

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1 marked as Defendant's Deposition Exhibit 17.  
2 For the record, it's my understanding that,  
3 while this bears no Bates stamp number, the  
4 beginning Bates number assigned to it is HAN  
5 3273. In the answer you gave a moment ago  
6 about what you did to prepare for topic 2,  
7 you referenced a spreadsheet.

8 A. Yes.

12:27 9 Q. Have I placed before you the

10 spreadsheet you mentioned?

11 A. No.

12 Q. Do you know what Exhibit 17 is?

13 A. Yes.

14 Q. What is Exhibit 17?

15 A. I haven't seen this version of  
16 this spreadsheet.

17 Q. So, in fairness, you can't tell  
18 me what Exhibit 17 is, right?

19 A. Correct.

12:28 20 Q. Was the spreadsheet that you  
21 reviewed to give testimony today here on  
22 topic 2, I'm probably going to get this  
23 acronym wrong, derived from HAN's CMS or CMO?

24 A. Excuse me?

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1                   Q.     What is the -- what do you call  
2     the database?

3                   A.     CMS.

4                   Q.     The spreadsheet you reviewed,  
5     was it derived from that database?

6                   A.     It was -- yes, derived from. It  
7     wasn't an automatic pull from the database,  
8     but the data is all in -- the data from the  
9     spreadsheet is all in the database.

12:28       10                  Q.     Who put that spreadsheet  
11     together?

12                  A.     I did.

13                  Q.     When did you do that?

14                  A.     The course -- over the course  
15     of -- since like January of 2011.

16                  Q.     Do you know what fields are in  
17     that database?

18                  A.     They're similar to these fields.

19                  The additional fields would be missing  
12:29       20     equipment.

21                  Q.     What other fields, that you can  
22     recall, are missing?

23                  A.     The date the office became  
24     active, the date we were notified of our

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1 removal or cancel request, the program  
2 that -- or, that's here. And that's all that  
3 I can recall.

4 Q. There might be more, but you  
5 just can't recall right now?

6 A. That's correct.

7 Q. Do you happen to have that  
8 spreadsheet with you today?

9 A. No, I don't.

12:30 10 Q. When you reviewed it in  
11 preparation for your deposition, did you  
12 review it with anybody or was that something  
13 you did all on your own?

14 A. On my own.

15 MR. O'BRIEN: Has that  
16 spreadsheet been produced?

17 MR. BERNAY: For the record, I  
18 believe Ms. Smith is referring to a  
19 spreadsheet entitled RHN tracking, which we  
20 have not produced. It was a spreadsheet  
21 created on the recommendation of counsel  
22 early in this litigation. We've been over  
23 this before. You've asked questions about the  
24 spreadsheet. I don't want to dismiss

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1 previous answers, I want to be sure, do not  
2 waive privilege to that spreadsheet, but we  
3 have informed you that the spreadsheet is  
4 simply a compilation of material that's  
5 already been produced to you in the database.

6 MR. O'BRIEN: Well, our position  
7 is two-fold. One, we've maintained from the  
8 beginning that we're entitled to that  
9 database. And to the extent there would be  
12:31 10 any room for argument on that, that's not  
11 over, that's not been foreclosed because the  
12 30(b)6 witness just testified that's the sole  
13 document she used to prepared for her  
14 testimony.

15 MR. BERNAY: I understand.

16 MR. O'BRIEN: So we would request  
17 immediate production of that.

18 Q. Is the spreadsheet we've been  
19 talking about, which I don't have, something  
12:31 20 that you've been using in the ordinary course  
21 of your work at HAN?

22 A. In relation to ContextMedia  
23 removals.

24 Q. Right. Part of your job

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1        responsibilities -- we'll flush this out a  
2        little bit more in a minute, is to monitor  
3        and be knowledgeable about and gather as much  
4        information as you can about practices that  
5        move away from HAN, right?

6              A.       Yes.

7              Q.       And that could be to a  
8        competitor like ContextMedia or some other  
9        competitor, right?

12:32        10          A.       Correct.

11          Q.       It could be to cable TV?

12          A.       Correct.

13          Q.       Could be because the practice  
14        closed?

15          A.       Correct.

16          Q.       Doctor retires, right?

17          A.       Em-hm.

18          Q.       There's a number of reasons,  
19        right?

12:32        20          A.       Yes.

21          Q.       Have you also seen a document  
22        that assigns codes to particular reasons that  
23        HAN loses a practice and then tracks the  
24        information that you gather in the ordinary

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1 course of business about why HAN loses a  
2 practice and then assigns it to a particular  
3 code?

4 A. Correct, yes.

5 Q. How many codes are there? I  
6 heard yesterday maybe 1 to 10, something like  
7 that?

8 A. 1 to 10.

9 Q. They include some of the things  
12:32 10 I just referred to?

11 A. Correct.

12 Q. Are there others that I failed  
13 to mentioned that you can recall are assigned  
14 a code?

15 A. If they change specialty.

16 That's all I can think.

17 Q. What do you call that document?

18 A. It -- I don't -- it doesn't  
19 really have a name.

12:33 20 Q. I heard it referred to yesterday  
21 as a churn matrix, does this mean anything?

22 A. That doesn't.

23 Q. Are you the author of that  
24 document?

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1 A. No.

2 Q. Who's the author of that?

3 A. I'm -- I don't know.

4 Q. Do you use it for any reason?

5 A. No.

6 Q. When you gather information from  
7 the field as to why a practice switched, do  
8 you take some steps to see that that  
9 information also gets to whoever is managing  
12:33 10 this document that has the codes in it?

11 A. No.

12 Q. I have seen reference in these  
13 spreadsheets that you personally, as part of  
14 your job, make calls to practices and try as  
15 best you can to understand why a practice has  
16 made a decision to move away from HAN; is  
17 that a fair representation?

18 A. Yes.

19 Q. How long has that been your job  
12:34 20 responsibility?

21 A. Since 2010.

22 Q. A long time?

23 A. Yeah.

24 Q. What else do you do at HAN?

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1           A.       I also provide --

2           Q.       I'm not suggesting that that's  
3       not enough.

4           A.       No, no, that's fine. Provide  
5       support for our network solution brochures,  
6       digital screens, hospital screens, hospital  
7       guides. We take editorial changes for  
8       hospital guides and send them to our  
9       production team who sends them to design to  
10      proof all of these changes to the guides.

11       We -- it's part of our job to keep practices  
12      engaged and proactively reach out to them.

13       Q.       When you say engaged and reach  
14      out to them, is that sort of ongoing customer  
15      service, periodically talk to practices  
16      trying to understand their concerns and  
17      needs?

18       A.       Yes, correct.

19       Q.       That's something else you do?

12:35 20       A.       Correct.

21       Q.       What's your actual title?

22       A.       Senior relationship manager.

23       Q.       How long have you held that  
24      title?

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1                   A.       Just -- the senior part just a  
2 week.

3                   Q.       Congratulations.

4                   A.       Thank you.

5                   Q.       Did a pay increase come with  
6 that I hope?

7                   A.       It did.

8                   Q.       And your title before that, I  
9 guess, was the same without the senior?

12:35           10          A.       Right.

11                  Q.       How long did you hold that  
12 title?

13                  A.       Since August of 2010.

14                  Q.       And how long have you been with  
15 the company?

16                  A.       Since August of 2010.

17                  (Exhibit 18 identified.)

18                  Q.       I've now handed to your counsel  
19 and you, Ms. Smith, what's been marked as  
12:36           20 Defendant's Deposition Exhibit No. 8, (sic)  
21 which is another spreadsheet which I'm told  
22 has a Bates number on the beginning of the  
23 page of HAN 5190. Have you seen this  
24 spreadsheet before?

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1 A. Yes.

2 Q. Does this spreadsheet also come  
3 from the CMR database?

4 A. CMS.

5 Q. I'll get it right at some point.  
6 Is this a subset of the CMS database?

7 A. I don't understand.

8 Q. Let me -- I'm not trying to  
9 trick you. It says at the bottom, PP CM  
12:36 10 spreadsheet of competition switches non CM,  
11 do you see that?

12 A. Correct.

13 Q. That's why I asked the question.  
14 Is this a subset of a larger CMS database  
15 that has things that relate to CM?

16 A. I'm still not understanding the  
17 question.

18 Q. Okay.

19 A. The database holds all of our  
12:37 20 information.

21 Q. For all the reasons practices  
22 leave?

23 A. Correct.

24 Q. And that's why I asked the

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1 question, if reading this down here suggests  
2 to us, you and me, that this spreadsheet has  
3 nothing in it about ContextMedia, nothing,  
4 does that suggest to you that it's only a  
5 subpart of the database?

6 A. Yes.

7 Q. Because the full database would  
8 have information in it about ContextMedia?

9 A. Correct.

12:37 10 Q. And if you look at column E, do  
11 you see it says stage, competitor cancels?

12 A. Correct.

13 Q. 1, 2, 3, 4, 5, 6, 7 pages, plus  
14 one other entry seem devoted to Accent  
15 Health, right?

16 A. Correct.

17 Q. And then we have EMR Systems, do  
18 you see that?

19 A. Yes.

12:38 20 Q. What's an EMR System?

21 A. Electronic medical record.

22 Q. I have no idea what that is.

23 Can you explain it to me?

24 A. When you go to your physician's

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1 office and they're typing on an iPad that  
2 record that they're keeping instead of on a  
3 chart like they would ten years ago, that's  
4 an electronic medical record.

5 Q. Are EMR Systems competitors of  
6 HAN?

7 A. EMR Systems are more of a  
8 competitor of our exam room brochure  
9 displays, because the EMR System does carry  
12:38 10 an educational component of it that can be  
11 printed out.

12 Q. I see. Then after those EMR  
13 Systems entries, of which there are three,  
14 there's one for Everweld Networks, do you see  
15 that?

16 A. Yes.

17 Q. Is that a competitor of HAN's?

18 A. I'm not familiar with Everweld.

19 Q. And then we pick up, after that,  
12:39 20 with several pages of Health Monitor switch  
21 outs?

22 A. Yes.

23 Q. Then we have Smart Health  
24 Network, do you know what that is?

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1           A.       I'm not familiar with Smart  
2 Health.

3           Q.       Then we have a lot of pages of  
4 switch outs from HAN to television, right?

5           A.       Correct.

6           Q.       And if we had the complete set  
7 of information from the CMS database, we'd  
8 have a column in E for ContextMedia, I  
9 suspect, as well?

12:39     10          A.       Correct.

11          Q.       Anybody else missing from this  
12 that you can recall?

13          A.       Health Media Network, Kids Care  
14 TV.

15          Q.       I take it, your position, you've  
16 became quite familiar with HAN's competition,  
17 correct?

18          A.       Correct.

19          Q.       Are there any others you can  
12:39     20 name besides those last two? You know what,  
21 there's a rule for this process, and that is,  
22 if at any point in time during the deposition  
23 you want to go back to an answer and question  
24 and change or modify however you want, you're

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1 free to do that.

2 A. Okay.

3 Q. So if you think of something  
4 later on, is my point, you can jump in.

5 A. Okay.

6 Q. I take it you've never seen at  
7 HAN's business a version of the spreadsheet  
8 just like what I handed to you, right?

9 A. I've seen this spreadsheet.

12:40 10 Q. You have?

11 A. Yes.

12 Q. With the ContextMedia stuff  
13 backed out?

14 A. Correct.

15 Q. And what was the occasion for  
16 your seeing this one?

17 A. Just reviewing the cancelled  
18 reasons for other programs.

19 Q. Why did you have occasion to see  
20 a spreadsheet like this that was incomplete  
21 and didn't have the ContextMedia piece to it?

22 A. The ContextMedia piece is just  
23 something that I didn't feel like I had to --  
24 I mean, this is the spreadsheet that I

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1       reviewed just because I'm very familiar with  
2       ContextMedia.

3           Q.     You didn't feel the need to do  
4       homework on them?

5           A.     No.

6           Q.     And when you did that, was it a  
7       spreadsheet just like the one I have in front  
8       of you, or, rather, was it a complete sheet  
9       and you only needed to review the  
12:41 10      nonContextMedia stuff? Does my question make  
11      sense to you?

12          A.     No.

13          Q.     So a spreadsheet we just were  
14       talking about, that you looked at, was it  
15       just like Exhibit 18, that is with all the  
16       ContextMedia stuff backed out, or was it the  
17       complete one with the ContextMedia stuff in  
18       it and you only felt the need to look at the  
19       entries for competitors other than  
12:41 20      ContextMedia and skipped over the  
21      ContextMedia ones?

22          A.     I'm not sure.

23          Q.     Okay, fair enough. We'll come  
24       back to these spreadsheets in a minute. Back

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1 to Exhibit 1, which is the topics.  
2 Exhibit 3 -- or topic 3, and on page 3, is  
3 for "Each HAN practice that switched from HAN  
4 to a competitor that is not Context, the  
5 reasons why that HAN practice did so." What  
6 did you do to investigate HAN's knowledge and  
7 prepare to testify today on that subject?

8 A. I reviewed this spreadsheet.

9 Q. Exhibit 18?

12:42 10 A. Exhibit 18.

11 Q. Not knowing if it had the  
12 ContextMedia stuff in it or not?

13 A. Correct.

14 Q. Anything else?

15 A. Not that I can recall.

16 Q. Did you interview anybody?

17 A. No.

18 Q. Didn't feel the need to, right?

19 A. Correct.

12:42 20 Q. And then, lastly, Exhibit 8,  
21 what did you do to prepare yourself and  
22 investigate the extent of HAN's knowledge on  
23 this subject?

24 A. I did not -- I did not do any

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1 further investigation on this topic.

2 Q. I'll ask you the same question.

3 Did you interview anybody?

4 A. No.

5 Q. When you started at the company  
6 in 2010, who did you report to?

7 A. Heather McGauvran.

8 Q. Did that ever change?

9 A. No.

12:43 10 Q. You still report to Heather?

11 A. Correct.

12 Q. Where, if anywhere, is Amy  
13 Finley in that chain of command?

14 A. Amy Finley is Heather's boss.

15 Q. Who does Amy Finley report to,  
16 if you know?

17 A. Kimberly -- well, I'm not sure.

18 Q. Okay. When you write things in  
19 e-mails or on the CMS database or memos,  
20 whenever you communicate in written form  
21 within the company, I take it that you  
22 endeavor to be as truthful as possible,  
23 right?

24 A. Correct.

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1 Q. And as accurate?

2 A. Yes.

3 Q. Complete as complete?

4 A. Yes, as far as my understanding.

5 Q. You would never say things that  
6 you didn't believe to be true, right?

7 A. Correct.

8 Q. Those are the easy questions. I  
9 think I asked you this question, but I want  
12:44 10 to make sure. The first spreadsheet I showed  
11 you, Exhibit 17, you told me you'd never seen  
12 this spreadsheet before?

13 A. Correct.

14 Q. Well, then, you do feel you're  
15 familiar with Exhibit 18, either as part of a  
16 larger document or by itself, right?

17 A. Correct.

18 Q. Why don't we look at -- and you  
19 can help me understand, I hope, what the  
12:45 20 various columns mean. So under column A, it  
21 looks like location ID?

22 A. Yes.

23 Q. I'm guessing that is some sort  
24 of unique number that HAN assigns to each

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1 practice?

2 A. Correct.

3 Q. And then location name, that's  
4 the name of the practice, correct?

5 A. Correct.

6 Q. It looks like in here that, if  
7 they have multiple screens or multiple  
8 locations, they get two or more entries,  
9 right?

12:45 10 A. If they have multiple locations  
11 they get more than one entry.

12 Q. It doesn't matter the number of  
13 screens, it's the matter of locations?

14 A. Depending on how they're set up.

15 Q. So, for example, after Mt.

16 Carmel, the very first one, the next two are  
17 University Family Medicine, do you see that?

18 A. Correct.

19 Q. And it look like the comments  
12:45 20 section is verbatim the same, right?

21 A. Yes.

22 Q. And then under program code,  
23 that tells you which HAN network they're in,  
24 right?

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1 A. Correct.

2 Q. And then stage code, it says  
3 cancelled -- well, strike that.

4 What is stage code?

5 A. Stage code would be how -- the  
6 stage that they are in in our program.

7 Q. What are the various stages  
8 besides cancel?

9 A. Active, installing, declined,  
10 activated, pitched.

11 Q. So if you had the full CMS  
12 database, you'd see practices assigned those  
13 various codes as well, right?

14 A. Correct.

15 Q. Who designed this database  
16 originally, do you know?

17 A. Created in-house. I don't --

18 Q. That was a bad question. When  
19 did HAN first start using this database?

12:46 20 A. I'm not sure.

21 Q. It preexisted your coming to the  
22 company?

23 A. Correct.

24 Q. But it's something you've worked

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1      with constantly ever since you arrived?

2            A.     Correct.

3            Q.     Then under column E, it says  
4        stage competitor cancels. And correct if I'm  
5        wrong, that's a column that gets filled in  
6        only if their stage code is cancelled and  
7        they went to something you deem your  
8        competition?

9            A.     Correct.

12:47 10          Q.     Stage date, what is that?

11          A.     That's the date that the --  
12        that's the date that the change happened to  
13        put them in whatever stage code they are  
14        currently in.

15          Q.     Okay. And the next one is their  
16        geographic location, right?

17          A.     Correct.

18          Q.     Same with stage, the first is  
19        the city and the second is the state, right?

12:47 20          A.     Correct.

21          Q.     The last one is comment text,  
22        that's where you find all the information  
23        that you gather in the ordinary course of  
24        your work about these various practices,

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1 right?

2 A. Correct.

3 Q. Has, to your knowledge -- well,  
4 strike that.

5 It sounds like HAN has  
6 maintained this spreadsheet in the ordinary  
7 course of its business at least since 2010,  
8 but maybe earlier than that, right?

9 A. To my knowledge this spreadsheet  
12:48 10 is pulled from the database.

11 Q. Let me ask it differently. That  
12 database has been maintained in the ordinary  
13 course of HAN's business at least since 2010,  
14 maybe earlier, right?

15 A. Correct.

16 Q. It's something you work in every  
17 day?

18 A. Yes.

19 Q. And then tell me some of the  
12:48 20 kinds of things that you do to act on the  
21 information that you're out there diligently  
22 gathering. Does it impact ideas for content?

23 A. Yes.

24 Q. Does it impact ideas for

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1 marketing?

2 A. I'm not sure.

3 Q. In other words, you guys create  
4 marketing collateral, correct?

5 A. Right.

6 Q. Are you aware of instances of  
7 information that you were able to gather  
8 information for the company that then  
9 influenced a decision to change, modify,  
10 improve marketing?

11 A. I don't do marketing so I don't  
12 know.

13 Q. It sounds like you don't want  
14 anything to do with it. Is it important to  
15 the salespeople?

16 A. I'm not sure.

17 Q. Are the salespeople interested  
18 in why practices decide to move to another  
19 choice?

20 A. I don't know.

21 Q. You have no connection with  
22 sales either?

23 A. I support sales when they're  
24 calling in asking for information about our

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1 existing customers.

2 Q. So to your knowledge, what use  
3 does HAN make of the information that you  
4 collect day to day and input it in column I?

5 A. We do improve our programs and  
6 create resources for our practices.

7 Q. And has it always been part of  
8 your job that, when you call in to a practice  
9 who has notified you that they want to move  
12:50 10 away from HAN, to do the best you can to try  
11 to get them to stay with HAN?

12 A. Yes.

13 Q. And, I mean, that's an important  
14 part of your job, right?

15 A. Right.

16 Q. And sometimes you're successful  
17 I take it?

18 A. Yep.

19 Q. And sometimes you're not?

12:50 20 A. Correct.

21 Q. Have you ever found an instance  
22 where a practice was not being truthful with  
23 you about the reasons it gave you that it  
24 made a decision to switch?

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1           A.       To my knowledge, there could be  
2       lots of reasons and I just have a  
3       couple-minute conversation with them. So I'm  
4       sure there's lots of information that's left  
5       out.

6           Q.       Well, I didn't -- my question  
7       wasn't is information left out, did you ever  
8       feel or did you ever learn of a practice  
9       simply not being truthful with you, Ms.

12:50 10       Smith?

11       A.       Most definitely.

12       Q.       Can you give me an example of  
13       that?

14       A.       We had at least one location  
15       that I can remember that cancelled due to a  
16       move and our -- one of our sales  
17       representatives went in to that office and  
18       found a different program on the wall.

19       Q.       Do you know what the different  
12:51 20       program was?

21       A.       I don't recall.

22       Q.       Can you recall -- it sounds like  
23       that stands out in your mind?

24       A.       Yeah.

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1           Q.     Because if you learn a practice  
2     is being untruthful to you, that tends to  
3     stand out in your mind?

4           A.     Right.

5           Q.     You don't appreciate it, right?

6           A.     Correct.

7           Q.     Can you think of any other  
8     instances where you learned that a practice  
9     had not been truthful to you in communicating  
12:51     10 why it wanted to move away from the HAN  
11 program?

12          A.     I can't think of any specific  
13     instances, but I know that there's others  
14     that I just can't recall.

15          Q.     Well, again, if you think of any  
16     of them during the course of the deposition,  
17     let me know.

18          A.     Okay.

19          Q.     I think you told me that's the  
12:52     20 kind of thing that ought to stand out in your  
21     mind, right?

22          A.     Right.

23          Q.     Can you in particular think of  
24     any instance where a practice said it was

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1 switching to Accent Health and gave you a  
2 reason and you later learned that they were  
3 being untruthful about the reason?

4 A. I can't think of a specific  
5 instance.

6 Q. How about Health and Monitor?

7 A. I can't think of anything  
8 specific.

9 Q. How about ContextMedia?

12:52 10 A. I can't think of a specific  
11 instance.

12 Q. If you later learn that a  
13 practice has essentially lied to you about  
14 the reasons it gave you for switching out to  
15 a competitor, you'd probably make a note of  
16 that somewhere, right?

17 A. Correct.

18 Q. Would you put it in the  
19 database?

12:52 20 A. Yes.

21 Q. That's kind of the place to put  
22 information about the practices?

23 A. Correct.

24 Q. That's kind of the gold

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1 standard, that's where everybody looks,  
2 right?

3 A. Yeah. I'm sure I could probably  
4 go through this spreadsheet and find at least  
5 a couple specific examples.

6 Q. Examples of?

7 A. Of a practice giving -- lying to  
8 us.

9 Q. You want to do that?

12:53 10 A. Yeah.

11 Q. Now, you're looking at  
12 Exhibit 17, which is a spreadsheet you've  
13 never seen before?

14 A. Well, I'm looking at the --  
15 these comments are pulled from our databases,  
16 as far as I'm aware. I guess I would feel  
17 more comfortable looking at the actual  
18 database.

19 Q. That's really the best source,  
12:53 20 isn't it?

21 A. Yeah.

22 Q. Why don't we look at Exhibit 18  
23 for now, because one of the topics,  
24 obviously, that you were designated on was to

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1       testify as to why practices switch from HAN  
2       to competitors other than ContextMedia.  
3       Before I start doing that, let me ask you a  
4       question. Do you feel like, as a result of  
5       doing this for three-and-a-half years, you  
6       have a good grasp of what factors are  
7       important to practices in making POC  
8       enrollment decisions?

9                     A.       Yes.

12:54       10          Q.       And would that include things  
11       like the quality of health-related  
12       programming?

13                     A.       I'm sorry?

14                     Q.       Would one of those factors be  
15       the quality of the programming?

16                     A.       Yes.

17                     Q.       And would one of those factors  
18       be the quality of any entertainment-related  
19       programming?

12:54       20          A.       Yes.

21                     Q.       And health related, right?

22                     A.       Correct.

23                     Q.       Is the length of the program,  
24       based upon your experience, a factor that

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1     practices take into account when making their  
2     POC provider decisions?

3                 A.     Yes.

4                 Q.     How about the media format,  
5     whether it's video or not; is that important?

6                 A.     Yes.

7                 Q.     And whether the program has  
8     sound or not, is that an important factor?

9                 A.     Yes.

12:55    10                 Q.     Technical service, is that an  
11     important factor?

12                 A.     Yes.

13                 Q.     The size and quality of the  
14     hardware, is that another important factor?

15                 A.     I'm not sure.

16                 Q.     Cross that one off. Is the  
17     ability to customize the programming an  
18     important factor?

19                 A.     Yes.

12:55    20                 Q.     The ratio of content versus  
21     advertising, is that another important  
22     factor?

23                 A.     Yes.

24                 Q.     Customer service, is that an

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1 important factor?

2 A. Yes.

3 Q. That's kind of near and dear to  
4 your heart, right?

5 A. Yes.

6 Q. How about the sales  
7 representatives and sales activities, is that  
8 an important factor?

9 A. Yes.

10 Q. Did I miss any, based upon your  
11 experience, that I should have included?

12 A. Not that I can think of.

13 Q. Same rule, if you want to jump  
14 in at some point if you think of something  
15 else.

16 A. Okay.

17 Q. In your mind, are you able to  
18 sort of rank in order of importance those  
19 things we just agreed were important factors?

20 A. No.

21 Q. If you were asked at a meeting  
22 at work, and you're experienced, because  
23 you're one that's closest to this, what's the  
24 top three important factors, would you be

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1 able to provide an answer to that?

2 A. Well, every office is different.

3 Q. I see. So it's sort of unique to  
4 the office?

5 A. Correct.

6 Q. That's a very good point.

7 A. Correct.

8 Q. It could vary widely from office  
9 to office?

12:56 10 A. (Witness nods head  
11 affirmatively.)

12 Q. Can you name one practice that,  
13 based upon your interaction with the  
14 practice, switched to ContextMedia because of  
15 something false or misleading ContextMedia,  
16 according to the practices, said to the  
17 practice?

18 A. I can go through our database  
19 and find numerous instances where the  
20 practice was misled or given false  
21 information about our program or Context  
22 program.

23 Q. When you say that, what do you  
24 have in mind?

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1           A.       The ratio of educational to  
2 advertisement, the topic of our programs, the  
3 quality of our educational segments. Those  
4 are the ones that I can think of off the top  
5 of my head.

6           Q.       I think you said three, but I  
7 only wrote two. Ratio of ads, quality of  
8 programming. What other one did I miss, or  
9 was there a third, maybe not?

12:58      10          A.       The topic of our programming.

11          Q.       Okay. As to these three things,  
12 ratio of ads, quality of programming, type of  
13 programming, wouldn't you expect the practice  
14 to know whatever the truth is as to those  
15 three items by virtue of fact that the HAN  
16 programming is running in their office every  
17 single day?

18          A.       No.

19          Q.       So you wouldn't expect them to  
12:59      20          know that?

21          A.       No.

22          Q.       Can you explain to me why you  
23 say that?

24          A.       The office staff is the one

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1       that's seeing it, that might not be the  
2       decision maker. If the doctor's the decision  
3       maker, they're not sitting in the waiting  
4       room, they're seeing patients.

5                     Q.       Back to build on the question  
6       that got us started down this path, are you  
7       aware of a single practice that told you they  
8       switched because of a reason that you later  
9       learned was a piece of false information  
10      provided by ContextMedia?

11                  A.       I'm sorry, can you say that  
12      again?

13                  Q.       Yeah, for example, did a  
14      practice ever say -- tell you, I switched  
15      because ContextMedia said to me that HAN's  
16      content is 50 percent advertising?

17                  A.       Yes.

18                  Q.       And are you aware of any -- can  
19      you name one practice?

01:00               A.       I can't give a specific example  
20      without looking in the database.

22                  Q.       Which I don't have here to show  
23      you, right?

24                  A.       Right.

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1           Q.       Can you recall a single practice  
2        that said, I switched solely because  
3        Context -- solely because ContextMedia told  
4        me something about the quality of your  
5        practice which you knew to be untrue?

6           A.        I'm sorry, can you say that  
7        again?

8           Q.        Can you think of a single  
9        practice that told you, I switched solely  
01:00 10      because of something that ContextMedia said  
11      to me about the quality of HAN's programming  
12      that you knew to be untrue?

13                  MR. BERNAY: Object to the form.  
14      You can answer.

15                  A.       I can't think of an example, but  
16      not a specific example.

17                  Q.       Okay. Tell me what example  
18      you're thinking of that you can't give me  
19      specifics on?

01:01 20                  A.       The office that I called and  
21      spoke to, the man explained that he went to a  
22      complete rheumatology loop and that our loop  
23      was not completely rheumatology.

24                  Q.       Was it in fact?

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1 A. Yes.

2 Q. But he could see for himself in  
3 your waiting room, right?

4 A. He was a back office manager so  
5 he didn't have complete access to the program  
6 in his day to day.

7 Q. He had no access to the waiting  
8 room?

9 A. I mean, I'm sure he had access,  
01:01 10 but he didn't have time to sit and watch the  
11 programming.

12 Q. Some practices told you they  
13 switched to ContextMedia solely because they  
14 wanted sound, right?

15 A. Correct.

16 Q. Some practices told you they  
17 switched to ContextMedia solely because they  
18 liked the greater length?

19 A. Correct.

01:01 20 Q. Some ContextMedia practices  
21 switched because they told you -- they did so  
22 solely because of a gift card?

23 A. Correct.

24 Q. Some practices switched from HAN

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1 to ContextMedia solely because they said they  
2 liked the fact there were three parts to the  
3 screen, right?

4 A. Correct.

5 Q. And some practices told you they  
6 switched solely because there was a weather  
7 information?

8 A. Correct.

9 Q. Some practices told you they  
01:02 10 switched solely because they found the  
11 programming more interesting?

12 A. That's what they said.

13 Q. Some perhaps told you they  
14 switched because they had patients who often  
15 waited longer than 30 minutes and the  
16 30-minute loop was too repetitive?

17 A. That's what they -- that's what  
18 I was told.

19 Q. And some practices told you they  
01:02 20 switched because they had a lot of elderly  
21 patients and they couldn't read the slides on  
22 HAN's programming?

23 A. Correct.

24 Q. Do you believe any of those

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1     practices that told any of those things were  
2     lying?

3                 A.     I -- I believe that they gave us  
4     only partial, part of the story. We don't  
5     trail, we don't trail practices when they  
6     cancel.

7                 Q.     Why would they only give you a  
8     partial story?

9                 A.     Because we don't bill them when  
01:03 10    they cancel, so I don't. We press, but we  
11    don't press too far.

12                Q.     What would be their incentive to  
13    not be truthful with you?

14                A.     To get off the phone so they can  
15    get back to their job.

16                Q.     Do you think the same sort of  
17    human interaction occurs when you talk to  
18    practices switching from Accent Health, that  
19    is, maybe they're not giving you all the  
01:03 20    reasons?

21                A.     Yes.

22                Q.     So it's not special to  
23    ContextMedia?

24                A.     Correct.

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1           Q.     Why don't we go back to  
2 Exhibit 18, if you would. Believe me, we are  
3 not going talk about all these.

4           MR. BERNAY: I'm going to hold  
5 you to seven hours.

6           MR. O'BRIEN: We're not going to  
7 use that, I guarantee that as well.

01:04       Q.     Let's just take a look at some  
9 of these. The first page, line 5. There, is  
10 it not true, that the practice that was  
11 moving to Accent Health said they preferred  
12 Accent Health's programming?

13          A.     Correct.

14          Q.     They also said they had recent  
15 service issues, right?

16          A.     Correct.

01:04       Q.     And that was a recurring theme  
18 that I failed to mention, was it not? That  
19 it is, a lot of practices, when they  
20 switch --

21          A.     I see this is the comment --  
22 this is a situation where recent service  
23 issues may have flagged our presence in their  
24 waiting room. That's a -- that's not a quote

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1       from the office. That's coming from whoever  
2       wrote this comment.

3           Q.       Okay. So that --

4           A.       So the office isn't the one that  
5       said that.

6           Q.       The office didn't mention it,  
7       but the person taking the comment knew that  
8       had been an issue so they contributed?

9           A.       Yeah, that's a possibility.

01:05      10          Q.       That was a recurring problem  
11       that HAN experienced in practices switching,  
12       that this was a -- whatever reasons they gave  
13       you, you knew that they also experienced  
14       recurring service issues, right?

15          A.       On a select few of the cancels.

16          Q.       Isn't it true that a vast  
17       majority of the practices that moved from a  
18       competitor -- moved from HAN to a competitor  
19       had had service issues of one sort or  
01:06      20       another?

21          A.       No.

22          Q.       Who was responsible for fixing  
23       the service issues?

24          A.       Can you rephrase that or --

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1           Q.        Sure. To the extent there were  
2     service issues that were plaguing HAN, who  
3     was responsible for remedying that, that was  
4     not your responsibility, was it?

5           A.        Correct. That would be the team  
6     that manages our vendors.

7           Q.        Third-party service vendors?

8           A.        Correct.

9           Q.        The very next entry says that  
01:06 10     this practice, upon notifying of  
11     cancellation, also had had service issues,  
12     right?

13                  MR. BERNAY: You're looking at  
14     line 6, Dick?

15                  MR. O'BRIEN: I am.

16           Q.        To be clear for the record,  
17     thank you. Line 6.

18           A.        Yes.

19           Q.        That is something the practice  
01:07 20     spoke to you about, right?

21           A.        I'm not sure.

22           Q.        What does S/W mean?

23           A.        Spoke with.

24           Q.        So doesn't that say spoke with

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1 Linda Neece about the service issues?

2 A. Yes. And -- okay, I see, yes.

3 Yes.

4 Q. And then the next page, page 18,  
5 this is a practice telling you that they are  
6 switching from you to Accent Health because  
7 of the programming, right?

8 A. Correct.

9 Q. And then if we jump down to 21,  
01:08 10 this is a practice that's telling you they're  
11 switching from you to Accent Health because  
12 they wanted the weather updated throughout  
13 the day, right?

14 A. Correct.

15 Q. Go ahead and read to yourself  
16 the rest of the comments there, and when  
17 you're ready to answer my question, my  
18 question is, isn't this -- doesn't it reflect  
19 whoever was on this call from HAN trying very  
01:08 20 hard to save the practice?

21 A. I wouldn't call that trying very  
22 hard. I mean, it was, to me, that sounds like  
23 a pleasant conversation.

24 Q. You would have put more effort

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1 into it?

2 A. I mean, this comment does not  
3 reflect what you're asking.

4 Q. Okay. Let's look at the entry  
5 for line 23 then. Here's the HAN personnel  
6 speaking to the practice, right? "They faxed  
7 an Accent Health cancel notification over a  
8 month ago to cancel all three offices. I have  
9 been trying to save them but did not succeed  
01:10 and could not recruit the help of the field  
10 sales because Cynthia Mallicote has been on  
11 medical leave so no one was available in  
12 area. The decision has already been made and  
13 they are insisting on removal or they will  
14 dispose of our equipment," do you see that?

16 A. Em-hm.

17 Q. Don't you recall instances where  
18 this happened, that is, HAN had received  
19 notice to remove the equipment and had not  
01:10 gotten out there timely while it tried to  
20 save the practice, and the practice said just  
21 what this practice said, if you don't come  
22 out, I'm going to take it down?

24 A. It's our policy to remove the

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1 equipment within 30 days. And that's -- I  
2 mean, that's what we stand to.

3 Q. Do you know how good HAN is  
4 honoring that policy?

5 A. We -- I don't have a percentage.

6 Q. But isn't it true that in many  
7 an instances HAN will -- and I'm not saying  
8 there's anything wrong with this, delay the  
9 removal of the equipment so they can buy time  
01:11 10 to do the best they can to try to save the  
11 practice?

12 A. If the person requesting the  
13 equipment to be removed is willing to discuss  
14 our -- discuss the removal, you know, it's  
15 definitely a friendly conversation. We would  
16 never simply not show up.

17 Q. Right. But as long as they're  
18 willing to have a dialogue, you're content  
19 not to schedule the deinstallation, right?  
01:11 20 A. Correct.

21 Q. That could be because practices  
22 are busy, like you said, they could be  
23 30 days, 60 days, 90 days, as long as you had  
24 a shot, right?

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1           A.       Right.

2           Q.       I'm still struggling how to  
3       figure out how to read this thing because,  
4       under column F, which is stage date, that  
5       would be the date of the cancellation, right?

6           A.       Correct.

7           Q.       And then it says in here that we  
8       scheduled the cancellation for 11/2/2010. And  
9       I was trying to figure out how to make sense  
01:12 10      of those two dates since one is before the  
11      other.

12          A.       Then the comment, when it says,  
13       "Remove Wednesday, 11/3/2010," that's when the  
14       technician is going out to remove the  
15       equipment. And the stage date of 11/8/10 is  
16       when we've verified that the heartbeat is no  
17       longer current, received the equipment back  
18       and actually cancelled the location in our  
19       database.

01:12 20          Q.       In your system -- and do you  
21       have any involvement at HAN on the sponsor  
22       side? By sponsor, do you know I'm referring  
23       to advertisers, right?

24          A.       Correct.

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1           Q.     The people that provide your  
2 revenue?

3           A.     Correct.

4           Q.     Do you have any involvement on  
5 that side?

6           A.     No.

7           Q.     Are you aware of any instances  
8 where -- well, strike that.

9                          Do you know when HAN has to  
01:13 10 report to advertisers the practice is no  
11 longer in the network? And by that I mean,  
12 do you know if it's when the cancellation  
13 letter comes in, when the equipment is  
14 deinstalled; when folks get around to closing  
15 out the system or none of the above?

16           A.     I don't know.

17           Q.     Okay.

18                          MR. BERNAY: Whenever you've got  
19 an -- we've almost been going for an hour, so  
01:13 20 I think it would be a good time to break for  
21 lunch.

22                          MR. O'BRIEN: I'm hungry.

23                          MR. BERNAY: You're hungry? We're  
24 all hungry.

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1                   (Lunch break taken.)

2                   MR. BERNAY: In the interest of  
3                   the full record, Lori wanted to add two  
4                   things to her prior testimony before we  
5                   start.

6                   MR. O'BRIEN: Sure, absolutely.

7                   A.       When reviewing information for  
8                   the case, we did -- I did go over some  
9                   e-mails from the past. Also, the spreadsheet  
02:04 10                  that I started keeping was after the first  
11                  practice on the spreadsheet was from January  
12                  2011, but I didn't start keeping that  
13                  spreadsheet until April 2011.

14                  Q.       Which spreadsheet?

15                  A.       The one that I was referring to.

16                  Q.       That you reviewed in preparation  
17                  for your deposition?

18                  A.       Correct.

19                  Q.       Okay. The one that I don't  
02:04 20                  have?

21                  A.       Right.

22                  MR. BERNAY: Well, Dick, let's  
23                  just be clear. The spreadsheet contains  
24                  information which is here, because it's the

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1 spreadsheet pulled from the database. So the  
2 cancel codes on that spreadsheet are here,  
3 it's a selection of the cancel codes that are  
4 here. So it is -- I think you would -- it is  
5 the main cancel code for each.

6 MR. O'BRIEN: My problem is you  
7 don't get to make that selection process.

8 And until today you consistently maintained  
9 the reason I'm not getting it is it's work  
02:05 10 product. We contested that and also argued  
11 that work product can be overcome if there's  
12 a substantial need. But my point about that  
13 argument's over now. Under the law, the fact  
14 that that's what she referred to in  
15 preparation for her deposition means I have  
16 to have it.

17 MR. BERNAY: I understand. We'll  
18 revisit the issue after the deposition.

19 MR. O'BRIEN: I thought it no  
02:05 20 longer becomes an issue by virtue of their  
21 testimony. It's the same thing if someone  
22 says I reviewed something to refresh my  
23 recollection. Anyway, I'm not going to waste  
24 Ms. Smith's time. Was there something else

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1       you wanted to do?

2           A.     That's it.

3           Q.     So the first point was, when I  
4       asked you to tell me everything you reviewed,  
5       you've now remembered that, in addition to  
6       what you told me, there was some e-mails,  
7       too?

8           A.     Correct.

02:06      9           Q.     Do you have an independent  
10       memory of what those e-mails were as you sit  
11       here today?

12          A.     I'm not -- I don't have one  
13       specific instance.

14          Q.     It would kind of surprise me if  
15       you did.

16          A.     Yeah.

17          Q.     How many?

18          A.     Probably in the nature of  
19       between one and 20.

02:06      20       Q.     Well, thank you, Ms. Smith.  
21       Thank you, Counsel.

22               Let's go back to Exhibit 18,  
23       please. Line 26, this is a practice telling  
24       you they're switching to Accent Health

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1 because the practice did not like HAN's small  
2 screens, soundless, uninteresting programs  
3 and they found -- didn't find your  
4 programming helpful to our patients; is that  
5 right?

6 A. Correct.

7 Q. Which then there was an offer  
8 made to update their screen, do you know what  
9 that means?

02:07 10 A. Upgrade their screens. They  
11 had -- they mostly likely had small, older  
12 equipment.

13 Q. At this point you were offering  
14 larger screens?

15 A. Yes.

16 Q. But that didn't cause the  
17 practice to be saved, right?

18 A. Correct.

19 Q. On the next one -- excuse me,  
02:08 20 not the next one. 28, it looks like the offer  
21 was made with a large 32-inch, A-open with no  
22 rack, do you know what that is?

23 A. A 32 would be a 32-inch screen.  
24 A-open is the computer that's mounted to the

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1 back of the screen, and no rack would be we  
2 would not install a brochure display that  
3 traditionally goes along with those screens.

4 Q. Those offers were made to try to  
5 satisfy the practice's need, correct?

6 A. Correct.

7 Q. Again, it didn't work, did it?

8 A. Correct.

9 Q. Then on the next page, 31,  
02:09 10 here's a practice that tells you that several  
11 months ago they sent a cancellation request  
12 from the practice -- or am I reading that  
13 wrong?

14 A. Well, this is regarding -- I'm  
15 not sure if that cancellation request is  
16 referring to the other, the related office.

17 Q. Well, does it appear that's what  
18 happened here, is that a practice had sent a  
19 cancellation notice several months before  
02:10 20 this particular phone call and the equipment  
21 still had not been removed?

22 A. It looks like they -- they had  
23 sent in a cancellation request and this says  
24 that the equipment was still there.

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1           Q.       So more than 30 days had passed  
2       since the cancellation notice, right?

3           A.       According to this.

4           Q.       And then, nonetheless, you were  
5       able to save one of the locations, right?

6           A.       It looks like they were able to  
7       save the exam room program.

8           Q.       But it looks like the practice  
9       had already taken down some of your equipment  
02:11 10      and installed Accent Health, right?

11         A.       Correct.

12         Q.       On the next page, line 38, it  
13       says, "Vanessa called in connectivity issues,  
14       working with POC onsite, suggested installing  
15       a dedicated line to resolve the issues," do  
16       you see that?

17         A.       Yes.

18         Q.       That's another instance where  
19       there was some connectivity issues?

02:12 20       A.       Correct.

21         Q.       It says, "She explained to me  
22       the changes in the office and they wanted to  
23       provide uniform patient education. She  
24       mentioned Lisa," do you think that's Lisa

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1 Grippo?

2 A. It looks like it.

3 Q. "Had given a presentation months  
4 ago and HAN lost. They decided to go with  
5 another competitor, Accent Health," do you  
6 see that?

7 A. Em-hm.

8 Q. My question for you about this  
9 one is, this looks like it was a head-to-head  
02:12 10 competition for a practice, Accent Health  
11 versus HAN, and Accent Health won. And if  
12 that part of what I just said is true, why  
13 would they be in the switch out chart? Does  
14 my question make any sense to you?

15 A. No.

16 Q. Let's say there's Aaron Bernay,  
17 M.D., practice, and he doesn't have anything,  
18 and you pitched the practice and Accent  
19 Health pitched the practice, you with me so  
02:13 20 far?

21 A. Em-hm.

22 Q. You have to answer out loud.

23 A. Oh, yes, sorry.

24 Q. That actually happens a lot,

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1 right?

2 A. Correct.

3 Q. It's not a switch out situation,  
4 you're both competing for new business,  
5 right?

6 A. Correct.

7 Q. Is there a spreadsheet that  
8 records the results of that activity?

9 A. No, not that I'm aware of.

02:13 10 Q. That's not captured?

11 A. Not that I'm aware of.

12 Q. You said earlier today that if  
13 you had the full CMS, there was, under D, an  
14 entry that could be made for pitched, did I  
15 hear that right?

16 A. Yes.

17 Q. In my scenario, it wouldn't be  
18 captured there?

19 A. It would be -- no, it -- no  
02:14 20 longer would it be captured there.

21 Q. So once you lose the pitch, it  
22 gets jettisoned somehow out of the database?

23 A. No, that's not the case. That's  
24 not exactly what pitched means.

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1 Q. Okay. What does pitch mean then?

2 A. Pitched means that the sales rep  
3 was going after an office that we're already  
4 aware, due to a request of a client that they  
5 want the program in that office.

6 Q. They're on some sort of target  
7 list?

8 A. Target, yes.

9 Q. So if I wanted to know how many  
02:14 10 times in 2010 to 2014 Accent Health and HAN  
11 have gone head-to-head for a practice that's  
12 never had a POC provider in there, and  
13 determine which practices those were and what  
14 the outcome of that activity was, is there  
15 any way to determine that to your knowledge?

16 A. No.

17 Q. No, you know there's no way, or,  
18 no, there's none to your knowledge?

19 A. None to my knowledge.

02:15 20 Q. And back to 38, the comments go  
21 on to say -- provide the reasons why the  
22 practice chose Accent Health over HAN after  
23 each side made a presentation, right?

24 A. Can you ask that question again?

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1           Q.        Sure. Do the rest of these  
2        comments in here describe the input from the  
3        practice as to why it ultimately chose Accent  
4        Health over HAN?

5           A.        Yes.

6           Q.        And among those were, "the  
7        practice didn't think that HAN's presentation  
8        could keep the patient's interest"?

9           A.        That's what it says here.

02:16 10          Q.        It also says, "the overall  
11        presentation by Lisa did not sell this  
12        product," right?

13          A.        That's what it says.

14          Q.        It also said, "they didn't like  
15        the HAN product because it shows the same  
16        thing every 30 minutes and we have patients  
17        waiting longer," right?

18          A.        Correct.

02:16 19          Q.        And they didn't like the fact  
20        that you didn't have sound, right?

21          A.        That's what it says, yeah.

22          Q.        Is it information like that that  
23        we just discussed that the folks in the  
24        content side could look at and figure out if

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1       they wanted to do something to address that?

2           A.     I'm sorry, could you ask?

3           Q.     Yeah. You testified this  
4       morning that one of the uses made of this  
5       information that you gathered from the field  
6       is that the people that are responsible for  
7       the HAN content might look at it and figure  
8       out if they need to respond in the  
9       marketplace in some competitive way, for  
10      example, no sound?

11           A.     Yes.

12           Q.     If HAN got a cancellation  
13       notice -- let's take Dr. Bernay again, got a  
14       cancellation notice from Dr. Bernay, and you  
15       were able to save the practice, would Dr.  
16       Bernay's practice appear in this spreadsheet,  
17       Exhibit 8, or would that only be found in a  
18       larger CMS database or does Exhibit 8 only  
19       have to do with switch outs?

02:17       A.     I -- I don't know. I don't know  
20       who put this spreadsheet.

22           Q.     But all the practices are in the  
23       database, right?

24           A.     Correct.

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1           Q.     Information about all the  
2 practices are in the database, right?

3           A.     Yes.

4           Q.     What we have here in Exhibit 8  
5 is only information about practices that  
6 ultimately switched out and couldn't be  
7 saved, right?

8           A.     These are all cancelled  
9 locations.

02:18 10          Q.     So if I wanted to know if a  
11 practice had sent in a cancellation notice  
12 and you were able to save it, I would have to  
13 go to the notes in the larger database,  
14 right?

15          A.     Correct.

16          Q.     Look at item 60, if you would,  
17 please. The HAN employee here spoke with Lisa  
18 Fini, F-I-N-I, who said that she had been OM  
19 for two months and the monitors never worked.

02:19 20          What does OM mean?

21          A.     Office manager.

22          Q.     And there were a number of  
23 instances where practices reported that their  
24 system had not been working for some period

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1 of time, right?

2 A. I'm not sure.

3 Q. You don't have a recollection of  
4 that?

5 A. I mean, there are a couple of  
6 them in here.

7 Q. You think there's just a couple?

8 A. I -- there's -- I mean, there's  
9 a handful.

02:19 10 Q. The HAN equipment installed in  
11 the offices that switched out to  
12 ContextMedia, that wasn't any different or  
13 higher quality equipment than HAN installed  
14 in the Accent Health office's, right?

15 A. I'd have to have the complete  
16 database to see what was installed then.

17 Q. But at any given time, wasn't  
18 HAN basically installing the same equipment  
19 in each practice?

02:20 20 A. Throughout the course of our  
21 company, we've upgraded and had different  
22 equipment.

23 Q. But there wasn't a point in  
24 time, let's say, January 2012, where you were

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1 getting better equipment to some practices,  
2 inferior equipment to other practices, that  
3 was never your practice, was it?

4 A. Well, I mean, there was a point  
5 in time when we were still installing 27-inch  
6 monitors and we were also installing 32-inch  
7 monitors.

8 Q. Sort of a transition period?

9 A. Yes.

02:21 10 Q. But other than those transition  
11 periods, you tried to be consistent in the  
12 product you were offering, right?

13 A. Correct.

14 Q. Look at the entry for 70,  
15 please.

16 A. Let me -- let me go back to that  
17 point. At one point, we were installing a  
18 different type of equipment in smaller  
19 offices than bigger offices.

02:21 20 Q. Okay.

21 A. So there was a time that we were  
22 installing different equipment in different  
23 offices. It wasn't just that one transition  
24 period.

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1                   Q.       Am I correct in saying that  
2       was -- that differentiation was driven by the  
3       space available? In other words, a larger  
4       waiting room?

5                   A.       There are multiple factors.

6                   Q.       Okay. Thanks for that  
7       clarification. Item 70, the HAN reporter  
8       wrote, "Dan called in and asked about the  
9       decision to switch programs. He said we're  
02:22      10      going with you. And I said, that's great that  
11     you decided to keep us, and he said, wait,  
12     where did you say you were calling from? He  
13     asked are you the ones with the PowerPoint?  
14     I said we're currently in his office, we have  
15     an exclusive contact and provide unlimited  
16     messages your office can use to promote  
17     whatever and even upload photos. He said  
18     he's been with us for roughly four years and  
19     they're looking for a change, wanted to go to  
02:22      20     Accent Health because it's more like a news  
21     broadcast." Goes on to say, "I asked about  
22     coexisting, he doesn't think they have room."  
23     Did you have practices that switched from you  
24     to Accent Health that characterized your

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1 content as PowerPoint like on occasion?

2 A. That's what -- that's what  
3 this -- that's what this guy is saying.

4 Q. Is that the only time you heard  
5 that characterization?

6 A. I'm not sure.

7 Q. And this is someone that had  
8 been with you for four years, right?

9 A. That's what it says.

02:23 10 Q. Then down at 73, there's the  
11 note made that "the site has had ongoing  
12 service issues," do you see that?

13 A. Em-hm.

14 Q. And I take it, you don't know,  
15 as you sit here today, if that was something  
16 the practice said to the HAN employee, or  
17 something the HAN employee put in there  
18 because he or she knew it?

19 A. Correct. I don't know where  
02:24 20 that's coming from.

21 Q. Goes on to say, "I'm going to  
22 send flowers but I do not think we will be  
23 able to save these two locations," do you see  
24 that?

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1 A. Yes.

2 Q. Did HAN occasionally send  
3 practices gifts in order to try to save a  
4 practice?

5 A. We did send flowers.

6 Q. Do you have any idea how many  
7 times you did it?

8 A. It was a rare occasion.

9 Q. Do you know the value of the  
02:24 10 flowers?

11 A. No.

12 Q. 84, by the way, several of these  
13 I notice a Sue called. Do you know who Sue  
14 is? Is she somebody on your staff or do you  
15 think that's someone at the practice?

16 A. From this comment, it leads me  
17 to believe that's someone at the practice.

18 Q. Okay. And here it's indicated  
19 the practice is switching to Health Monitor  
02:25 20 because the doctor was a member of a  
21 rheumatology society, right?

22 A. That's what it says.

23 Q. And you tried -- or not you, HAN  
24 tried to schedule a deinstallation and the

Lori Smith, 3/18/2014

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1 practice said they wanted it removed sooner  
2 than 30 days, right?

3 A. Correct.

4 Q. Did HAN try to accommodate a  
5 practice when it wanted the equipment removed  
6 sooner than 30 days?

7 A. That's what it shows here.

8 Q. You know that happened from time  
9 to time?

02:26 10 A. Yeah.

11 Q. Page 89, second line there, it  
12 says, "Health Monitor had removed the  
13 equipment and taken it off the site," do you  
14 see that?

15 A. Yes.

16 Q. Did Health Monitor do that with  
17 some frequency, to your knowledge?

18 A. Very small handful.

19 Q. How about Accent Health?

02:26 20 A. No.

21 Q. Never?

22 A. No, not to my knowledge.

23 Q. Did HAN ever take down a  
24 competitor's equipment?

Lori Smith, 3/18/2014

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1           A.       No, not to my knowledge. If  
2       there is a situation out there like that, it  
3       was purely an accident.

4           Q.       Never on purpose?

5           A.       No, never on purpose.

6           Q.       You didn't see any e-mails that  
7       showed otherwise?

8           A.       No.

9           Q.       Let's look at 95, please. This  
02:27 10      is a practice switching from HAN's product to  
11      television, right?

12         A.       Yes.

13         Q.       And here again the practice is  
14      saying they've had connectivity problems all  
15      along, right?

16         A.       She said that we always have  
17      techs out there.

18         Q.       Well, the first sentence says,  
19      "They have had connectivity problems all  
02:28 20      along," right?

21         A.       That looks like -- that looks  
22      like an opinion from whoever wrote the  
23      comment.

24         Q.       That's another internal

Lori Smith, 3/18/2014

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1 contribution?

2 A. I believe, yeah.

3 Q. It looks like she's being told  
4 she would have considered, but our program  
5 has never worked right, is that --

6 A. Correct.

7 Q. -- how you interpret this?

8 A. I'm sorry, can you ask that  
9 again?

02:29 10 Q. It looks like she's saying she  
11 would have considered HAN, but our program  
12 has never worked right?

13 MR. BERNAY: What's the question?

14 Q. Is that how she interprets that?

15 A. Yes.

16 Q. And it's reported, as you said a  
17 moment ago, they always have techs out there,  
18 right?

19 A. Correct.

02:29 20 Q. And one monitor's been out for  
21 weeks, right?

22 A. That's what it says.

23 Q. You don't doubt that she's being  
24 truthful with HAN, do you?

Lori Smith, 3/18/2014

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1           A.       Excuse me?

2           Q.       You don't doubt that she's being  
3        untruthful with -- or you don't doubt that  
4        she's being truthful with HAN?

5           A.       It's hard to say.

6           Q.       In your experience in doing this  
7        for four years, is it the case that you feel  
8        practices are often untruthful with HAN?

9           A.       I feel like we get a portion of  
02:30     10       the story quite often.

11          Q.       But the portion you get, do you  
12        think they're lies?

13          A.       There's embellishments.

14          Q.       And how do you know that?

15          A.       When -- oftentimes, if I'm  
16        looking in the database and I'm seeing that a  
17        office manager is reporting the screen hasn't  
18        worked for four weeks, but I can see that a  
19        tech just went out two weeks ago. Or vice  
02:30     20       versa, if she's saying that we've been out  
21        there ten times in the last two months, I can  
22        look at our database and see the last time we  
23        were out there was in 2012.

24          Q.       And if you were to do something

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1 like what you just described, would you make  
2 a note in the database to that effect?

3 A. It's possible.

4 Q. Wouldn't it be a good practice  
5 to do that?

6 A. I would -- I would say that kind  
7 of -- all of the information is there in the  
8 database.

9 Q. You endeavor to make the  
02:31 10 database as complete as possible, right?

11 A. Correct.

12 Q. And by complete as possible,  
13 that would include anything that's important,  
14 right?

15 A. To the most extent.

16 Q. Do you have a different database  
17 where you keep other important stuff?

18 A. No.

19 Q. Do you know what percentage of  
02:31 20 practices HAN loses to television as opposed  
21 to other competitors?

22 A. No, I don't.

23 Q. Have you ever seen someone try  
24 to do that calculation?

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1                   A.       That's a report that can be  
2 pulled.

3                   Q.       Have you seen a report like that  
4 before?

5                   A.       No.

6                   Q.       How would you go about pulling  
7 it?

8                   A.       Through Answers, our database.

9                   Q.       What's Answers?

02:32           A.       It goes into the database and  
10                  pulls the information.

12                  Q.       So it's a software product where  
13                  you can --

14                  A.       It just kind of matches up the  
15                  database, pulls the information.

16                  Q.       Entry 177, there it's reported  
17                  that, "Called office, tried to save --"

18                  A.       And just to go -- just to go  
19                  back. I have seen -- like, I've seen  
20                  presentations from other people's, the way  
21                  that they pull CMS and match up competitors  
22                  or different cancel reasons, but I've never  
23                  pulled that data myself.

24                  Q.       So you've seen someone else

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1       prepare a report that says, in this quarter  
2       of 2010, in terms of our churn, it's  
3       X-percentage ContextMedia, X-percentage  
4       changed it out, X-percentage television, that  
5       kind of thing?

6           A.       And different -- the other --  
7       all the cancel reasons.

8           Q.       192. It appears the office is  
9       reporting to HAN that, "The patients do not  
02:34 10      like the program and do not watch it," right?

11          A.       I'm sorry, can you ask that  
12     again?

13          Q.       She's reporting that the  
14      patients do not like the program and do not  
15     watch it.

16          A.       That's what it says.

17          Q.       And, "They watch TV and watch to  
18     be entertained," right?

19          A.       Yes.

02:34 20          Q.       Is it fair, perhaps,  
21      unfortunate, that one thing POC providers  
22      have to compete with is soap operas and talk  
23     shows?

24          A.       I'm sorry, what was your

Lori Smith, 3/18/2014

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1 question?

2 Q. I said, is it fair but  
3 unfortunate that one of the things POC  
4 providers have to compete with is soap operas  
5 and talk shows?

6 A. That's fair.

7 Q. She also goes on to say that,  
8 "the program hasn't worked in a month," do  
9 you see that?

02:34 10 A. Yes.

11 Q. That's not an instance where you  
12 went into some records and found that she was  
13 being untruthful, was it?

14 A. I'm sorry?

15 Q. This isn't an instance where you  
16 went into the records you referred to earlier  
17 and determined that she was not being  
18 truthful with you?

19 A. I'd have to look at the  
02:35 20 database. It looks like that's a quote from  
21 her, which may or may not be truthful.

22 Q. Now, look at 203. It looks like  
23 this practice is leaving HAN because they  
24 came up with their own patient education

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1 program, do you see that?

2 A. Yes.

3 Q. And that's another reason  
4 practices sometimes leave the POC provider?

5 A. Correct.

6 Q. And then 220, here's a practice  
7 telling you -- not you, I'm sorry, HAN, that,  
8 "they want to switch away from the HAN  
9 product because they had spoken to their  
02:36 patients," right?

10 A. Correct.

11 Q. "And the patients had told the  
12 practice they are not engaged in watching the  
13 HAN information"?

14 A. That's what it says.

15 Q. And the last one I'll ask you  
16 about is 227. Here, again, the practice is  
17 telling HAN they don't want the HAN program,  
18 right?  
02:36

19 A. That's what it says.

20 Q. She says it hasn't worked in  
21 some time?

22 A. That's what she said.

23 24 (Exhibit 19 identified.)

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1           Q.       Take whatever time you'd like,  
2     Ms. Smith, to look this over. But when you're  
3     ready to answer, my first question for you,  
4     do you recall this e-mail?

5           A.       I don't recall this e-mail.

6           Q.       I don't think you're on it, but  
7     the reason I asked you is, it has to do with  
8     the subject of why practices switch away from  
9     HAN. And I was wondering if this is one of  
02:38 10    the e-mails you looked at as part of your  
11    investigation or preparation to give  
12    testimony for the company today?

13          A.       No.

14          Q.       When you agreed to serve as the  
15    company's witness for the testimony of the  
16    switch outs, did you ask to see all the  
17    e-mails HAN had on the subject of why  
18    practices switched?

19          A.       I did not ask to see all the  
02:38 20    e-mails.

21          Q.       There's a reference, this starts  
22    out with an e-mail from Amanda Devlin, do you  
23    know Amanda Devlin?

24          A.       I know of Amanda Devlin.

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1                   Q.     Did you know part of her job at  
2     HAN was to pose as a practice to gain  
3     competitive information from other POC  
4     providers?

5                   MR. BERNAY: Object to the form  
6     of the question. You can answer.

7                   A.     I don't know. I don't -- I don't  
8     know of that being part of her job.

9                   Q.     Do you know that she did that?

02:39           A.     No.

11                  Q.     Do you know of others at HAN who  
12     falsely posed as a practice interested in a  
13     competitor's product in order to get  
14     information about the competitor?

15                  A.     No.

16                  Q.     You've never heard of that  
17     happening before?

18                  A.     No.

19                  Q.     Is that something that you  
02:39     approve of?

21                  A.     No.

22                  Q.     Do you think that's an ethical  
23     business practice?

24                  A.     No.

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1 Q. I take it you've never done it?

2 A. No.

3 Q. If someone asked you to do it,  
4 you wouldn't, right?

5 A. Correct.

6 Q. So Ms. Devlin gives her report  
7 on her obtaining information from  
8 ContextMedia, and that's reported up,  
9 ultimately, to it looks like Jill Brewer, Tom  
02:40 10 Campbell, Sabrina Shaddles, Mike McAllister,  
11 Kathy Gould, Liz Phillips, and Kimberly  
12 Theiss, do you see that?

13 A. Yes.

14 Q. And in October 2011, who was  
15 Jill Brewer, if you know?

16 A. I don't know what her official  
17 title was.

18 Q. Did you know Ms. Brewer back  
19 then?

02:40 20 A. I've met her.

21 Q. Did you ever work on the same  
22 team as her?

23 A. She was in some way part of our  
24 department. She was -- I'm not sure how she

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1 related to me personally.

2 Q. What's the name of your  
3 department?

4 A. The relationship management  
5 team.

6 Q. What are the various departments  
7 within HAN, if you can tell me?

8 A. All of HAN? Or just the customer  
9 experience team?

02:41 10 Q. Okay.

11 A. There's the field services  
12 digital, field services print, relationship  
13 management team.

14 Q. What was the first one?

15 A. Field services digital.

16 Q. And field services print. I  
17 thought you said one before that?

18 A. The customer experience team.

19 Q. That was it. Any others?

02:41 20 A. I'm the customer experience  
21 team, that's the three.

22 Q. Oh, those are all within  
23 customer?

24 A. Yes.

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1 Q. And you are within customer  
2 service?

3 A. Yes.

4 Q. Which one of those are you on?

5 A. Relationship management.

6 Q. And there are probably other  
7 groups and departments at HAN that recruit  
8 practices, right?

9 A. That?

02:42 10 Q. Go out and try to acquire  
11 practices?

12 A. Right.

13 Q. That's a different group?

14 A. Correct.

15 Q. You're servicing the practices  
16 after they've been acquired?

17 A. Correct.

18 Q. There's probably another group  
19 that's out trying to get sponsors and  
02:42 20 advertisers, correct?

21 A. Correct.

22 Q. Do you know why Ms. Brewer left  
23 HAN?

24 A. No.

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1 Q. In October 2011, who was Tom  
2 Campbell?

3 A. I'm -- I'm not 100 percent sure  
4 what Tom's position was.

5 Q. Was he the CEO?

6 A. No.

7 Q. How about Sabrina Shaddles?

8 A. She was the head of the creative  
9 department.

02:42 10 Q. They're involved with content?

11 A. Correct.

12 Q. Ms. Merz works in that group?

13 A. Yes.

14 Q. Then Mike McAllister, who is he?

15 A. Mike -- I believe Mike  
16 McAllister was the CEO at that time.

17 Q. Since you've been there, tell  
18 me -- I'm having a hard time keeping track.

19 Who was the CEO?

02:43 20 A. I believe it was Mike  
21 McAllister.

22 Q. Who was the next CEO?

23 A. Tom McGuinness.

24 Q. He's the CEO now, right?

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1 A. Correct.

2 Q. And who was Kathy Gould?

3 A. She's the CIO, chief information  
4 officer.

5 Q. How about Liz Phillips?

6 A. She's in program management.

7 Q. How about Kimberly Theiss or  
8 Theiss?

9 A. At that time, I'm not sure what  
02:43 10 Kimberly's position was at that time.

11 Q. Do you consider all these  
12 people, as of 2011, to be part of the senior  
13 management?

14 A. I can't say that all of them.

15 Q. How about one by one, how about  
16 Ms. Brewer?

17 A. Yes.

18 Q. How about Mr. Campbell?

19 A. Yes.

02:44 20 Q. How about Ms. Shaddles?

21 A. I'm unsure.

22 Q. Certainly Mr. McAllister?

23 A. Yes.

24 Q. How about Ms. Gould?

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1           A.     I'm sure -- I am unsure

2     October 2011.

3           Q.     How about Ms. Phillips?

4           A.     Again, I'm unsure.

5           Q.     How about Ms. Theiss?

6           A.     Unsure.

7           Q.     Were all these people senior to  
8     you?

9           A.     Yes.

02:44       10          Q.     Given the fact that all these  
11     senior people are being told that someone at  
12     HAN is engaging in what you characterize as  
13     unethical conduct, wouldn't you expect them  
14     to have something to say about that?

15                    MR. BERNAY: Object to the form.

16     You can answer.

17                    A.     I don't. I don't have any  
18     knowledge that they didn't, you know, address  
19     what happened.

02:45       20          Q.     Well, look at Ms. Brewer's  
21     e-mail to this group. She starts off by  
22     saying, "Below is an e-mail trail whereby RHN  
23     responded to Berne Devlin (aka Amanda Devlin)  
24     who contacted them and expressed interest in

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1       their network. In addition, attached are a  
2       couple pieces of collateral they use to  
3       compare our services when attempting to  
4       convert an office. Share with whom you feel  
5       is relevant. Funny, RHN," you understand  
6       that's ContextMedia, right?

7                  A.        Correct.

8                  Q.        "Tells Berne," which is Amanda's  
9        pseudonym, "that we are 'has been's from the  
02:45 10       '80's," do you see that?

11                 A.        Yes.

12                 Q.        It doesn't look like senior  
13        management is being disapproving of Ms.  
14        Devlin's conduct, does it?

15                 A.        From this comment it doesn't  
16        look like that.

17                 Q.        In fact, they're all sort of  
18        considering it and saying pass it on to  
19        others, correct?

02:46 20                 A.        Correct.

21                 Q.        And then Ms. Brewer goes on to  
22        write, and this is, frankly, the reason I  
23        want to show you this document. "With that  
24        said, they," you understand they is

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1     ContextMedia?

2                 A.     Correct.

3                 Q.     "Are clearly capitalizing on our  
4     practice services concerns, specifically our  
5     connectivity issues. Almost all the offices  
6     they've been able to convert have a record of  
7     one or more service issues. This is classic,  
8     you wait until your competitor trips up, then  
9     you stepped in. With that said, we must  
02:46 10   explore more modern options not only because  
11   this is increasing our competitive risks, but  
12   also because I believe practices are  
13   beginning to feel more comfortable sharing  
14   their internet connection as well as the  
15   mounting costs around our fax-share model,"  
16   do you see that?

17                 A.     Yes.

18                 Q.     And read as much as you like,  
19     but then the next paragraph also says, "We  
02:47 20   have hard copies of ContextMedia's  
21   installation instructions which includes an  
22   inventory of the items they ship," do you see  
23   that?

24                 A.     Yes.

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1           Q.     Do you approve of HAN having  
2 those documents?

3           A.     Not necessarily.

4           Q.     Back in this period, 2011, the  
5 HAN practice was being delivered over a fax  
6 line, right?

7           A.     Correct.

8           Q.     Who paid the fax charges?

9           A.     I'm not sure.

02:48 10          Q.     You don't know if it was the  
11 practice or HAN?

12         A.     We have two different setups. We  
13 have a dedicated line setup and we have an  
14 analog sharing setup. But I'm not -- I -- to  
15 my knowledge, it's just a matter of who  
16 supported the line. Is that what you're  
17 asking?

18         Q.     I'm was wondering who had to pay  
19 for it?

02:48 20         A.     The line itself?

21         Q.     Yeah.

22         A.     It -- depending on their  
23 setup -- we could share their fax machine, or  
24 we would have a dedicated line.

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1           Q.     If you had a dedicated line, you  
2 would absorb the cost?

3           A.     Correct.

4           Q.     Around this point in time, was  
5 it becoming clear to HAN that the fax-based  
6 model versus internet model was putting HAN  
7 at a competitive disadvantage?

8           A.     I'm not -- it wasn't aware to  
9 us.

02:49       10          Q.     Did it ever become apparent to  
11 you?

12          A.     It -- from a cost -- from a cost  
13 standpoint.

14          Q.     And is HAN now Internet based?

15          A.     We're getting there.

16          Q.     The aspiration is to get there?

17          A.     Em-hm, yes.

18          Q.     Do you know when you expect to  
19 get there?

02:49       20          A.     No.

21          Q.     Do any practices have it yet?

22          A.     Oh, yes.

23          Q.     So you're rolling them out?

24          A.     Yes.

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1           Q.     With the objective to get them  
2 all there eventually?

3           A.     Correct.

4           Q.     You don't know if that's going  
5 to be this quarter, next quarter or 2015?

6           A.     I don't know.

7           Q.     Do you know what percentage of  
8 the practices have it?

9           A.     No.

02:49 10          Q.     And it's going to help HAN if  
11 they can -- once they get them all on  
12 Internet, right?

13         A.     Correct.

14         Q.     Now, Ms. Brewer says or I'd read  
15 this part to you. I'm repeating it now, a  
16 sentence from the bottom paragraph of the  
17 first page, "Almost all of the offices  
18 they've been able to convert have a record of  
19 one or more service issues." Do you disagree  
02:50 20 with Ms. Brewer's statement there?

21         A.     I couldn't say.

22         Q.     Let's look at Exhibit 17, that's  
23 the long one. Now, I think you told me this  
24 morning that you don't believe you've ever

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1     seen it in this particular format, right?

2                 A.     Correct.

3                 Q.     But do you have any reason to  
4     doubt that the information in the comment  
5     side in the right column comes from your CMS  
6     database?

7                 A.     I'm sorry, can you say that  
8     again?

9                 Q.     Sure. Do you have any reason to  
02:50 10    doubt that the information in the right-hand  
11    side column, in the notes column, come from  
12    the CMS database?

13                A.     No, I don't doubt that this  
14     information comes from CMS.

15                Q.     So it's fair for me to ask you  
16     questions about this?

17                A.     Yes.

18                Q.     This is not going to be foreign  
02:51 19    to you?

20                A.     No.

21                Q.     Now, these are paginated, you  
22     see at the bottom it'll say like 1 of 55 and  
23     so on and so on? Oh, yours isn't paginated  
24     that way.

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1 MR. BERNAY: No, it's not.

2 MR. O'BRIEN: Okay.

3 MR. BERNAY: Why don't you call  
4 out location ID at the bottom of the page on  
5 the first column.

6 Q. I see, okay. Well, yeah, this  
7 one is printed -- that's the darn thing with  
8 these spreadsheets. Counsel's suggestion is,  
9 of course, a good one.

02:51 10 MR. BERNAY: Well, did the two  
11 marry each other? Is your pagination  
12 different than mine?

13 MR. O'BRIEN: No, what happened  
14 was someone printed it this way, and then I  
15 worked on it, and then someone alerted me to  
16 the fact that, I guess, they hadn't opened up  
17 all the fields, so some of the fields here, I  
18 wanted to give you a full and complete  
19 version.

02:52 20 MR. BERNAY: This was produced in  
21 native format to you.

22 MR. O'BRIEN: I don't even know  
23 what that means.

24 MR. BERNAY: It was produced as

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1 an Excel file, not as a pdf.

2 MR. O'BRIEN: Native, I think of  
3 American Indian. We'll work our way through.  
4 I think what you suggested is a good idea.

5 Q. Can you find location 3002214,  
6 which is Orange County? On my copy it's five  
7 pages in.

8 MR. BERNAY: 3002214.

9 THE WITNESS: It's on the bottom?

02:53 10 MR. BERNAY: It's in the middle  
11 of the page.

12 Q. And there are -- actually,  
13 there's a bunch of entries for Orange County.  
14 I see there are different days. Let's look  
15 at the one that is for April 18, 2012, do you  
16 see that?

17 MR. BERNAY: It's the one that  
18 starts with the comment "called office"?

19 MR. O'BRIEN: Yes.

02:53 | 20 A. Okay.

21 Q. And this is an entry you made,  
22 right?

23 A. Correct.

24 Q. And it says, "The office

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1       switched to DHN," that's ContextMedia, right?

2           A.       Correct.

3           Q.       "Because they offered a bigger  
4       screen and their program does not play the  
5       same thing over and over again," do you see  
6       that?

7           A.       Yes.

02:54      8           Q.       "The rep visited the office in  
9       person and called the office to sell the  
10      project. Melissa said they did receive a  
11      gift card for switching," she asked you why  
12      you wanted to know, you said, "I explained  
13      that there is a code of ethics because our  
14      clients are Pharma companies and there are  
15      laws restricting gifts." Why were you saying  
16      that to the practice?

02:54      17          A.       At that -- I was under the  
18       impression that the -- I believe it's the  
19       Sunshine Act restricts Pharma companies from  
20       providing gifts to physicians' offices to  
21       provide their products.

22          Q.       Were you telling this practice  
23       that you thought ContextMedia was behaving  
24       unethically?

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1           A.       I don't -- I didn't tell her  
2       that they were behaving unethically.

3           Q.       Is that what you were trying to  
4       communicate?

5           A.       The code of ethics, that it was  
6       more of a get to the bottom and find more  
7       information versus putting down ContextMedia  
8       saying they were being unethical.

02:55       9           Q.       Did you ever try to put down

10      ContextMedia?

11       A.       No.

12       Q.       Were you saying this to the  
13      practice to try to save it?

14       A.       No.

15       Q.       Now, I'm going into several  
16      pages to -- and these are really in no  
17      numbered order, are they? 3432121, it's Dr.  
18      Jagdeo.

02:56       19           MR. BERNAY: Say that again,  
20      3432121?

21           MR. O'BRIEN: Yeah, I apologize.  
22      I thought I had this figured out.

23       Q.       And there are several entries  
24      for this practice on November 30, 2012, and

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1 I'd like to ask you about the very last of  
2 those. Oh, you know what? That's the stage  
3 date so that doesn't tell you when the call  
4 was, does it? Okay. Well, anyway, I want to  
5 ask you about the last entry concerning that  
6 practice.

7 MR. BERNAY: It's the next page.

8                   Q.        "Called office and spoke with  
9 Lorna," I appreciate your guys patience on  
10 this. "She explained that they will be  
11 keeping HAF," what is HAF?

12                   A.     Healthy Advice for your family,  
13   it's a brochure program.

14 Q. It's what again?

## 15 A. Brochure program.

16                   Q.       Oh, program. "The doctor just  
17       decided to go with a program that offered a  
18       flat screen TV in the waiting. She explained  
19       that this TV has sound and segments more like  
20       the news so it was not just a slideshow of  
21       information. She said the screen was playing  
22       information on rheumatology right now. The  
23       sound and video along with the size and  
24       updated look of the equipment were the sole

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1 reasons for switch. Lorna explained that she  
2 called us two months ago to tell us about the  
3 switch, but there was no record of such  
4 contact. I asked Lorna if she knew what  
5 number she called but she could not tell me.  
6 Lorna explained the other company did not say  
7 anything about us and that the office  
8 actually shipped the equipment back. Return  
9 labels had DHN info on them --"

02:59 10 MR. BERNAY: Sorry, Dick. For the  
11 record, we missed that part in this  
12 spreadsheet.

13 MR. O'BRIEN: Oh, really?

14 MR. BERNAY: Yes.

15 MR. O'BRIEN: Where do you guys  
16 stop?

17 MR. BERNAY: We stop at return.

18 It looks like it got clipped by the printout.

19 MR. O'BRIEN: Oh, the word return  
02:59 20 is the last one you have?

21 MR. BERNAY: In this cell.

22 Q. Well, mine said, to finish that,  
23 "Return labels had DHN info on them,  
24 reassigned order to Amy F." I take it, if

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1       you want to assume with me for the moment  
2       that I read that correctly and it is on here,  
3       the return labels had DHN info on them,  
4       you're probably noting that to make the point  
5       that ContextMedia probably gave them to ship  
6       the materials, right?

7                  A.      Correct.

03:00         Q.      Did you ever learn that, with  
9       respect to this practice, what they  
10     identified as the sole reasons for the switch  
11     was not an accurate statement?

12               A.      I'm sorry, can you ask that  
13     again?

14               Q.      They say here that those were  
15     the sole reasons for the switch, right?

16               A.      That's what it says.

17               Q.      Did you ever learn that not to  
18     be true?

03:00         A.      I never learned -- no, I never  
20     learned that not to be true.

21               Q.      You believe that some practices  
22     were switched by ContextMedia from HAN for  
23     things that ContextMedia did improper, right?

24               A.      Correct.

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1           Q.     Will you concede that some  
2 practices, just some practices, switched from  
3 HAN to ContextMedia for reasons other than  
4 any improper conduct?

5           A.     Yes.

6           Q.     Are you able to tell me how many  
7 are in which camp?

8           A.     No.

03:01       Q.     No way for you to do that,

10 right?

11          A.     Correct, we have --

12          Q.     It could be a lot in one camp  
13 and a little in another or vice versa, it  
14 could be split?

15          A.     Right. We've since learned a  
16 lot about the misrepresentations, so it's  
17 hard to say which offices received  
18 misrepresentations and which did not.

03:01       Q.     But you're not going to dispute  
20 that some offices just switched due to fair  
21 competition?

22          A.     Correct.

23          Q.     Then I jump down two entries to  
24 3437501, Drs. Gnana and Darshi -- I bet you

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1 encounter some names, don't you?

2 A. Yes.

3 Q. They're a little more  
4 complicated than Lori Smith. That's not a  
5 question. "I asked Monshuan to confirm that  
6 and also asked why they chose DHN over HA?  
7 She said the doc is a diabetic doc and it  
8 made sense to go with the DHN as PCN with not  
9 applicable to their specialty," do you see  
03:02 that?

10 A. How does this entry start?

11 Q. Called and spoke to Monshuan.

12 A. Okay, yes.

13 Q. PCN is a reference to your  
14 primary care network product, right?

15 A. Correct.

16 Q. And that has a lot of  
17 educational material on it other than that  
18 specific to the condition of diabetes, right?  
03:02

19 A. It's a wide range of conditions  
20 that could or could not be affected by  
21 diabetes.  
22

23 Q. But it's conditions other than  
24 diabetes, too, right?

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1 A. Correct.

2 Q. I mean, do you know all the  
3 conditions that are referenced in that  
4 product?

5 A. It changes from time to time,  
6 but when you're talking about high blood  
7 pressure, that's relevant to a diabetes  
8 patient. Eating right and exercising also is  
9 relevant to a diabetes patient.

03:03 10 Q. But you wouldn't dispute the  
11 fact that a product that is exclusively  
12 related to diabetes is going to be different  
13 than the PCN one?

14 A. Correct.

15 Q. At least for me it's turning to  
16 the next page, and I want to talk about one  
17 of the entries for Clinical Associates,  
18 3437969, maybe it's on your same page, I  
19 don't know.

03:03 20 MR. BERNAY: What's the entry  
21 date?

22 MR. O'BRIEN: For all these it  
23 looks like November 30, 2012.

24 MR. BERNAY: I'm sorry, I'm

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1 looking at the column that's -- you may not  
2 have it, I don't know. The column that's  
3 closer to the comment section.

4 MR. O'BRIEN: October 23, 2012.

5 MR. BERNAY: Starts, "Called the  
6 office to follow up"?

7 MR. O'BRIEN: Yes, exactly.

8 Q. This is, again, you recording  
9 the information, right?

03:04 10 A. Correct.

11 Q. And Maria from this practice  
12 explains to you she faxed two letters to  
13 notify us the equipment was to be removed,  
14 right?

15 A. Correct.

16 Q. Were there instances where the  
17 practices thought they had given you notice  
18 and either they sent it to the wrong fax or  
19 left a voice mail, for whatever reason, it  
03:04 20 didn't get returned, mixups like that?

21 MR. BERNAY: Object to the form.

22 You can answer.

23 A. There were instances where  
24 practices felt like they had given us --

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1 alerted us to a cancel but we didn't get it.

2 Q. Now, she goes on to say, "she  
3 did not get this number from the other  
4 company and explained the other company had  
5 not said anything to her about our  
6 equipment," do you see that?

7 A. Yes.

8 Q. At this point in time,  
9 October 23, 2012, when you were calling in to  
03:05 10 practices that wanted to switch to  
11 ContextMedia, you were routinely asking  
12 questions like, did they misrepresent  
13 themselves to be HAN, did they say they were  
14 authorized to remove our equipment, did they  
15 say anything about -- things like that,  
16 right?

17 A. I was asked -- I was asking with  
18 some routine, every practice doesn't get  
19 every question.

03:05 20 Q. Right. But that was because of  
21 some things you found out about in the field  
22 regarding ContextMedia. When you got a call  
23 about a switch out from ContextMedia, you  
24 were trying to gather information along those

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1     lines each time, right?

2                 A.     Correct.

3                 Q.     And then when you did, as you  
4     did here, you put it down if there was  
5     anything noteworthy or important, right?

6                 A.     I'm sorry?

7                 Q.     And when you did that and you  
8     got the information that was noteworthy or  
9     important, you endeavored to put it in here  
03:06 10    so others could see it and use it, right?

11                A.     For the most part. This is a  
12    summary of the conversation.

13                Q.     But your practice in doing a  
14    summary is to put in the important stuff, and  
15    if you leave anything out, you leave out the  
16    unimportant stuff, right?

17                A.     Correct.

18                Q.     It's kind of the nature of a  
19    summary?

03:06 20               A.     Right.

21                Q.     And so it goes on to say that,  
22    "she requested the equipment be removed in  
23    August and September," that's two and one  
24    months earlier, "so she figured it would not

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1     be an issue when the company installed. Our  
2     system has not worked since March," do you  
3     see that?

4                 A.     Yes.

5                 Q.     Did you determine that she was  
6     being inaccurate when she said the HAN system  
7     did not work since March?

8                 A.     The -- she is saying that the  
9     system has not worked since March.

03:07         10               Q.     Do you know if she was lying?

11               A.     They had a heartbeat at this  
12     time, so I don't know. I don't know that --  
13     whether she was being truthful or not.

14               Q.     That's an interesting term in  
15     this context. So they were still alive, as  
16     far as you knew?

17               A.     Yeah.

03:07         18               Q.     In other words, as far as you  
19     could tell on your end, the system seemed to  
20     be running?

21               A.     They were connecting, yes.

22               Q.     But you knew of instances where  
23     you would get, as you put it, a heartbeat and  
24     techs would go out and it was a problem?

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1 A. I'm sorry?

2 Q. You knew of instances where you  
3 were getting a heartbeat and techs would go  
4 out, and techs, technicians, would go out and  
5 it was in fact a problem, right?

6 A. Correct.

7 Q. Blue screens?

8 A. The blue screen is kind of a  
9 simple fix, but different, black screen or  
10 something along those lines.

11 Q. Let's go to my next page the  
12 practice is Prime Health Network, and the  
13 call date is February 26, 2013. Now, there's  
14 actually multiple ones of those. And on mine  
15 it says, next to that date, phone in and the  
16 comment begins, "Received call from Shayna."

17 A. Okay.

18 Q. And the initials of the person  
19 reporting here for HAN is LWB, who is that,  
20 do you know?

21 A. Liz Billmann.

22 Q. How long did Ms. Billmann work  
23 for the company?

24 A. She was there prior to my start

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1 date.

2 Q. So you don't know when she  
3 started?

4 A. No.

5 Q. Is she still there?

6 A. No.

7 Q. Do you know when she left  
8 approximately?

9 A. Approximately October, November  
03:09 10 of 2013.

11 Q. These comments show notes, "the  
12 docs prefer the loop because they can create  
13 the entire thing, it doesn't repeat for days  
14 and they have the same flexibility and custom  
15 messaging," do you see that?

16 A. Yes.

17 Q. That's a comment you heard  
18 before, right?

19 A. I can't say that I've heard this  
03:09 20 comment -- specific comment over and over.

21 Q. I guess I'll rephrase my  
22 question. You heard before that doctors  
23 preferred content that they can customize?

24 A. Correct.

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1 Q. And you heard before that  
2 doctors switch because they found a  
3 competitor's product less repetitive than  
4 HAN's?

5 A. Correct.

6 Q. And the comments go on to say  
7 that you had a discussion with the practice  
8 where you told her that only HAN can remove  
9 the equipment, right?

03:10 10 A. Liz had that conversation.

11 Q. I'm sorry, thank you. The  
12 reporter, Liz, reports here that she  
13 discussed with the practice removal of the  
14 equipment, right?

15 A. Yes.

16 Q. And the practice was told that  
17 only HAN can remove it, right?

18 A. Correct.

19 Q. And I think an agreement was  
03:10 20 made for a deinstallation date, right?

21 A. Well, this comment is cut off,  
22 but I can -- I only have up until, "Not the  
23 office staff and --"

24 Q. So you don't have the comment

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1 she said she understood?

2 MR. BERNAY: No, not on this.

3 Q. All right. Well, are you aware  
4 of instances in a ContextMedia switch out  
5 where the practice notified HAN they were  
6 switching to ContextMedia and HAN then went  
7 and deinstalled the equipment?

8 A. Can you say that again, please?

9 Q. Are you aware of instances where  
10 the practice notified HAN that it had made  
11 the decision to switch to ContextMedia, and  
12 then HAN and the practice arranged for HAN to  
13 remove the equipment?

14 A. Yes.

15 Q. And that happened more than  
16 once, right?

17 A. Correct.

18 Q. There are other instances where  
19 ContextMedia took the equipment down itself,  
20 right?

21 A. Correct.

22 Q. Do you know how many -- what  
23 percentage of the switch outs HAN removed the  
24 equipment versus ContextMedia?

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1 A. I don't.

2 MR. BERNAY: Dick, we've been  
3 going for about an hour.

4 MR. O'BRIEN: Yeah.

5 MR. BERNAY: Is this a good time  
6 to take a break?

7 MR. O'BRIEN: Yeah, let's take a  
8 break. Whatever you want.

9 (Break taken.)

03:26 10 Q. A couple more questions about  
11 this spreadsheet. Now I'm at 3441380, which  
12 is Leyla Daneshdoost. It's a few items  
13 beneath the one we just talked about, and  
14 March 23, 2012. It starts, "Called office to  
15 follow up on cancel reasons," do you see?

16 A. Em-hm.

17 Q. Take whatever time you want to  
18 read it, Ms. Smith, but when you're ready to  
19 answer, my question is, this is one of those  
03:27 20 examples where the practice needed sound  
21 because the patients were older and had a  
22 hard time reading the screen.

23 MR. BERNAY: Dick, I'm just going  
24 to note for the record, ours cuts off again

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1 at, "Janice was in a hurry, I thanked her  
2 for --" and that's the last.

3 Q. The last is "partnering with  
4 us."

5 MR. O'BRIEN: I don't know what  
6 we're going to do about this after the fact.  
7 I mean, I think we have to use the exhibit as  
8 it is with the recognition that some things  
9 are cut off, and the ability to argue about  
03:27 10 it or not. I haven't seen anything that  
11 would be material, but you may have a  
12 different view.

13 Q. Anyway, do you remember my  
14 question any more?

15 A. No, go ahead.

16 Q. This is one of those examples  
17 where the practice said they needed sound  
18 because their patients were elderly and  
19 couldn't read the small screen, right?  
03:28

20 A. They had a hard time reading the  
21 small screen, they had the 19-inch is what it  
22 says.

23 Q. As HAN's ongoing effort to try  
24 to save practices who said they wanted to

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1 switch, HAN would offer to co-exist with  
2 television, correct?

3 A. Correct.

4 Q. And on some occasions they  
5 offered to co-exist with competitors,  
6 correct?

7 A. Correct.

8 Q. Were you aware -- have you ever  
9 seen ContextMedia's enrollment form?

03:28 10 A. I'm sure I have, but.

11 Q. Did you know that it asks that a  
12 practice not have another product in the  
13 waiting room?

14 A. I don't remember that.

15 Q. Do you recall knowing that when  
16 suggesting that practices consider  
17 coexisting?

18 A. No.

19 Q. Let's go to Long Island  
03:29 20 Diabetes, which is 345945, the entry for  
21 April 4, 2012. And it begins, "Called office  
22 to follow up on cancel request."

23 A. Yes.

24 Q. And, "Spoke with Barbara. She

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1 explained that they switched programs because  
2 the new program focuses on diabetes. She  
3 liked our program and it worked fine for  
4 them, the biggest problem with the program  
5 was that the PCN, " that's you guys, correct?

6 A. Correct.

7 Q. "Program advertised many drugs  
8 that they do not prescribe since they deal  
9 only with diabetes. She mentioned Spiriva."

03:30 10 Do you recall other instances where that was  
11 a reason a practice switched, because your  
12 practice was advertising from pharmaceutical  
13 products that weren't relevant to the  
14 practice?

15 A. This is the only -- I don't  
16 recall any other off the top of my head, no.

17 Q. Jump down to a couple lines, a  
18 couple entries later for the Arthritis  
19 Connective something or other, the May 30,  
03:31 20 2012 entry. Do you see that?

21 A. Yes.

22 Q. It said, "Called office and  
23 spoke with Nicole. She explained the doctor  
24 saw RHN at the ACR conference and decided he

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1 would like to try something new. RHN did not  
2 approach the office to interview their  
3 patients and at no time did they present  
4 themselves as HAN," do you see that?

5 A. Yes.

6 Q. There were a number of instances  
7 that you recall where you were told the  
8 practice was switching because they'd seen a  
9 presentation made by ContextMedia at an  
03:31 10 industry conference, right?

11 A. Correct.

12 Q. During that time period, did HAN  
13 participate in these industry conferences?

14 A. I'm not sure.

15 Q. Do you recall a point in time  
16 where HAN decided that, for strategic and  
17 competitive reasons, it needed to start doing  
18 that?

19 A. I'm aware that we are doing  
03:32 20 that.

21 Q. That's probably not your end of  
22 the business?

23 A. Correct.

24 Q. You know, grab Exhibit 18 again

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1 for a moment, and stay where you are on  
2 Exhibit 17, and I was just struck by  
3 something. For Exhibit 17, the format within  
4 any particular practice seems like you keep a  
5 running chronological list of comments for  
6 the particular practice, right?

7 A. Correct.

8 Q. So you can look -- you go on the  
9 database, at least the part that's reflected  
03:32 10 by 17, and just get a blow by blow of the  
11 interaction of the practice from start to  
12 finish, right?

13 A. Correct. For the -- in the  
14 database it's going to have every comment.

15 Q. Right. But they're organized by  
16 context, right? And the date?

17 A. They can be organized a number  
18 of ways.

19 Q. Okay. How are you most familiar  
03:33 20 with it? In the format that we're looking at  
21 now where you can sort of track the progress  
22 or series of comments over time with the  
23 practice?

24 A. In this type of format, it's

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1       going to depend on how you pull the report,  
2       how you filter the database information.

3           Q.       There sounds like a lot of  
4       different ways to present this database  
5       information.

6           A.       Correct.

7           Q.       The only reason I raise this is,  
8       I was struck by the fact just now that the  
9       one we're looking at seems to have these  
03:34 10      chronological entries in it, and 18 doesn't  
11     do that. And I'm wondering if what 18 does,  
12     but you tell me, does 18 just pull out the  
13     comment field for the cancellation activity  
14     and none of the previous activity?

15           A.       I don't know.

16           Q.       For example, you look at the  
17      first page, the first entry, Mt. Carmel  
18      Medical Group, we've got an entry of the  
19      reasons for the cancellation, right?

03:34 20           A.       Correct.

21           Q.       But now I'm believing that  
22      there's probably a whole slew of entries from  
23      Mt. Carmel that precede that, right?

24           A.       Correct.

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1           Q.        You guys were reaching out  
2     periodically to see how the practice was  
3     doing?

4           A.        Right.

5           Q.        So this all gets a snapshot of  
6     the cancellation, right?

7           A.        I can't say. I don't know how  
8     this report was pulled.

9           Q.        Going back to 17, you go to the  
03:35 10     next page, or my next page, practice 3486088,  
11     Osteoporosis and Rheumatology, the entry for  
12     May 14, 2012, starts, "Cancel, going with  
13     RHN."

14           A.        Okay.

15           Q.        And the reporter here is KSK,  
16     who is KSK?

17           A.        Karen Kline.

18           Q.        Is she still with the company?

19           A.        No.

03:35 20           Q.        And these comments for this  
21     practice about in the middle, it's reported,  
22     after she's being told there's a 60 day  
23     notice, "She asked if there was any way to  
24     remove it sooner because it has not worked

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1 for so long already and she did not want her  
2 patients to have to see a blue screen for  
3 another two months. I checked with Heather  
4 and, since we hope to sell them HAR too, we  
5 can schedule the removal for after 6/6." HAR  
6 is the brochure stuff?

7 A. Correct.

03:36 8 Q. And it looks like here with the  
9 practice did ask that you remove the  
10 equipment sooner than 60 days, you  
11 accommodated the practice, right?

12 A. Correct.

13 Q. Now I go forward a number of  
14 pages to 3552912, Family Medical Health.

15 MR. BERNAY: I'm sorry, Dick,  
16 what is the number again?

03:37 17 Q. I'm sorry, 35529212, the  
18 November 6, 2012, entry that begins, "Called  
19 office and spoke with Janice. She explained  
20 that the equipment was not working and she  
21 called in to have us come fix it. No one ever  
22 came so she decided to switch to  
23 ContextMedia," do you see that?

24 A. Yes.

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1           Q.       There were instances where, due  
2       to HAN's failure to respond to service  
3       complaints, that the practice became  
4       frustrated and went to a competitor, right?

5           A.       Can you say that again?

6           Q.       There were instances where a  
7       practice became frustrated with the service  
8       experience with HAN and, because of that,  
9       switched to a competitor?

03:38       A.       From what -- there are instances  
10      where the practice felt like they were  
11      reaching out and were reaching out to someone  
12      else, or we didn't -- don't have a record of  
13      a call. Like what happened in this case, it  
14      looks like there's -- there's no record of a  
15      call in, so, again, it's unclear if she, you  
16      know, was reaching out or.

18           Q.       Do you recall the e-mail I  
19      showed you from Ms. Brewer?

03:38       A.       Yes.

21           Q.       Where she said that virtually  
22      all the practices that had switched from HAN  
23      to ContextMedia were ones where there was a  
24      history of service problems?

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1 A. That -- yes.

2 Q. This would be one example of  
3 that, right?

4 A. I wouldn't consider this an  
5 example because the comment that they're  
6 having service issues is coming from the  
7 office and not from what we're seeing in our  
8 database. So it's unclear if this is a  
9 perceived need for service or an actual need  
03:39 10 for service. So if they were not connecting,  
11 we would know about it within seven days.

12 Q. I'm getting the sense that, in  
13 your four years of doing this, you've come to  
14 the conclusion that offices aren't  
15 trustworthy?

16 A. No.

17 Q. Well, go in about another four  
18 pages to 3655328, the Greenville Healthcare,  
19 and the call is July 1, 2013. And who is J.  
03:40 20 Lawrence?

21 A. Joyce Lawrence.

22 Q. She was on your staff at the  
23 time?

24 A. Correct.

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1                   Q.     All these people making these  
2 calls, were they reporting to you at the  
3 time?

4                   A.     No, no, they were my peers.

5                   Q.     Oh, okay. So you all were  
6 reporting up to Ms. McGauvran?

7                   A.     McGauvran.

8                   Q.     I forgot, is she still with the  
9 company?

03:40           A.     Yes.

11                  Q.     And the entry here is -- well,  
12 if they're your peers, how did you get picked  
13 to do this? That's not necessary.

14                  The entry here is, "Dee had  
15 called in to have a monitor removed since  
16 their office doctors had decided to go with  
17 ContextMedia. I asked her why as their  
18 office has been with us since 2006. She said  
19 ContextMedia has scrolling news,  
20 weather/educational stories, and they were  
21 looking for something different. I explained  
22 we will have the weather info on our monitor  
23 screen soon," do you see that?

24                  A.     Yes.

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1           Q.     Yet the practice went ahead and  
2 cancelled, right?

3           A.     Correct.

4           Q.     Did you find with respect to  
5 ContextMedia you were sort of playing  
6 technology catch up at times?

7           A.     I don't know if it would be  
8 technology catch up, but I think we were  
9 keeping up with what practices were asking  
03:42 10 for.

11          Q.     Well, during the 2011, '12, '13  
12 time period, were you finding that Context's  
13 product offerings more often than not was  
14 meeting the practice's needs more than HAN's  
15 product offering?

16          A.     No.

17                MR. BERNAY: Object to form, but,  
18 sorry, were you finished?

19          Q.     You were hearing a lot of  
03:42 20 practices wanted video, right?

21          A.     Correct.

22          Q.     ContextMedia had that, right?

23          A.     Correct.

24          Q.     And HAN didn't at the time,

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1 right?

2 A. Correct.

3 Q. You were hearing a lot that  
4 ContextMedia had sound, right?

5 A. Yes.

6 Q. And HAN didn't at the time,  
7 right?

8 A. Correct.

9 Q. And you were hearing a lot that  
03:42 10 ContextMedia was preferred because it was  
11 Internet based, right?

12 A. I don't feel that that's a  
13 reason that I heard very often.

14 Q. You were hearing in certain  
15 instances where the practices were condition  
16 specific that they preferred ContextMedia  
17 product because its product was condition  
18 specific, right?

19 A. I'm sorry?

03:43 20 Q. We've seen examples where the  
21 practices tell you that they preferred  
22 ContextMedia because ContextMedia's offering  
23 was condition specific?

24 A. Correct.

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1 Q. And whereas HAN's was not,  
2 right?

3 A. Our arthritis program was, but  
4 practices were under the impression that it  
5 was not.

6 Q. And rheumatology it was not,  
7 right?

8 A. For rheumatology it was  
9 condition specific.

03:43 10 Q. It was?

11 A. Yes.

12 Q. What about for arthritis?

13 A. That's the same thing.

14 Q. Same thing?

15 A. Yeah.

16 Q. Just shows you how ignorant I  
17 am. Diabetes?

18 A. Diabetes was the primary care.

19 Q. And so you heard that some  
03:43 20 practices preferred ContextMedia's diabetes  
21 offer because it was condition specific?

22 A. Correct.

23 Q. Here's an example where  
24 ContextMedia's product was preferred by the

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1 practice because they had weather info on the  
2 screen, right?

3 A. Correct.

4 Q. And HAN didn't have that?

5 A. Correct.

6 Q. Did you ever hear that a  
7 practice preferred ContextMedia's product  
8 because it had health-related recipes?

9 A. Yes.

03:44 10 Q. And at the time, HAN didn't,  
11 right?

12 A. Correct.

13 Q. Does HAN have all those things  
14 now?

15 A. We still don't have -- no.

16 Q. Do you have weather now?

17 A. On some programs.

18 Q. Do you have recipes?

19 A. We have -- we have recipes in a  
03:44 20 completely different way. We don't have a  
21 video recipe that a patient can see in the  
22 waiting room.

23 Q. Seeing someone playing Julia  
24 Child?

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1 A. Right.

2 Q. Cooking something?

3 A. Right.

4 Q. Have you seen ContextMedia's  
5 loop?

6 A. I haven't. I've seen the --  
7 some segments from their website.

8 Q. You've never gone in to an  
9 office and looked at it?

03:45 10 A. No.

11 Q. But you've got a flavor for it  
12 from the snippets that are on the website,  
13 right?

14 A. Correct.

15 Q. Did any of those snippets show  
16 you that ContextMedia's content also would  
17 have, like, sort of round table discussions  
18 and people talking about health-related  
19 topics?

03:45 20 A. Yes.

21 Q. And HAN doesn't have that  
22 either, correct?

23 A. Correct.

24 Q. Now, I've jumped ahead a bunch

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1 to 3736202, the entry dated September 19,  
2 2012.

3 A. What's the practice name?

4 Q. I'm sorry, Thomas Lafferty.

5 A. What was the date?

6 Q. September 19, 2012. Did you find  
7 it?

8 A. Yes.

9 Q. It says, "Cancel. Try to save.

03:46 10 A. I have learned from Lesley's comment that  
11 this office plans to cancel us and replace  
12 with ContextMedia. We have an open WR-SVC  
13 followup order for broken rack? and a  
14 proactive order for PM walkthru," do you see  
15 that?

16 A. Yes.

17 Q. What does WR-SVC followup order  
18 mean?

19 A. To have -- the service  
03:47 20 representative has gone out to update the  
21 brochures in the brochure display and is  
22 reporting that the office needs to be  
23 followed, there's some type of follow-up  
24 that's needed.

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1 Q. Does WR mean waiting room?

2 A. No, that's work, work service  
3 follow up.

4 Q. I see. And that was for a broken  
5 rack or a malfunctioning screen?

6 A. It looks like for a broken rack  
7 from this comment.

8 Q. And what's a proactive order for  
9 PM walkthru?

03:47 10 A. We proactively call offices to  
11 walk them through the website and show them  
12 how to update their personalized messages on  
13 the screen. So that would be an order that  
14 was loaded prior to the comment.

15 Q. Tell me again who KSK is.

16 A. Karen Kline.

17 Q. And she is the one you told me  
18 she's gone, right?

19 A. Correct.

03:48 20 Q. "I will need to try to save and  
21 address all issues if possible. If it becomes  
22 necessary, will try to schedule removal for  
23 November and stress how we are the only one  
24 to remove our equipment. Require 30-day

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1 written notice, etc." Do you see that?

2 A. Yes.

3 Q. Now, this call is occurring on  
4 September 19, 2012, right?

5 A. Correct.

6 Q. Don't you read this comment to  
7 be saying I'm going to delay the removal for  
8 more than 30 days to try to save the  
9 practice?

03:48 10 A. No.

11 Q. What about the part that says,  
12 "If it becomes necessary, will try to  
13 schedule a removal for November," let's just  
14 take that part. That's more than 30 days  
15 after September?

16 A. Correct.

17 Q. And then it goes on to say, "and  
18 stress how we are the only ones to remove our  
19 equipment," right?

03:49 20 A. Correct.

21 Q. So before this November  
22 deinstallation, no one else can touch it,  
23 right?

24 A. Correct.

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1           Q.       And she also says, "In the  
2 meantime, I'm going to try to save it,"  
3 right?

4           A.       Correct.

5           Q.       And putting that together, you  
6 don't interpret that to be saying, I'm going  
7 to delay the deinstallation beyond 30 days to  
8 try to save it?

9           A.       I see that she's scheduling the  
03:49 10 removal. At one point our enrollment  
11 agreement said 60 days and the --

12          Q.       But not at this point, right?

13          A.       I can't say.

14          Q.       But she says require a 30-day  
15 notice?

16          A.       Right. I can't, I --

17          Q.       All right. Then I go to, at  
18 least on mine, the second to last page, and  
19 the practice is Capital Arthritis  
03:50 20 Rheumatology, the number is 3736413. And the  
21 entry date is January 16, 2012. And this is a  
22 comment from you?

23          A.       Okay.

24          Q.       It says, "Called site to follow

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1 up on ACN non connect." I don't remember  
2 seeing non connect before, what does that  
3 mean?

4 A. That means that they lost  
5 heartbeat.

6 Q. Okay.

7 A. So the call may be calling for  
8 updates.

9 Q. And the last heartbeat was six  
03:50 10 days earlier, right?

11 A. Correct.

12 Q. And then she tells you they  
13 cancelled the program but the equipment was  
14 shipped back on Friday, right?

15 A. Correct.

16 Q. And she told you, "There was  
17 nothing we could have improved in our  
18 program," right?

19 A. Correct.

03:51 20 Q. That's because, "They decided to  
21 switch because the ContextMedia program is  
22 specifically geared toward RA," right?

23 A. That's what it says.

24 Q. Do you recall there were any

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1       number of instances where you guys did your  
2       best to save the practice and the practice  
3       was candid with you and said, there's really  
4       nothing you can do to save the practice?

5                  A.       Yes.

6                  Q.       They said they enjoyed working  
7       with you, but, given this other competitive  
8       offering, there was nothing you could do at  
9       this point, correct?

03:51       10                  A.       Correct.

11                  Q.       I'm sorry, I do have one more.  
12       It's Dr. Barry Shibuya, 3742102. It's you  
13       reporting again on June 13, 2012. And the  
14       comment begins, "Per Phyllis Timole."

15                  A.       Okay.

16                  Q.       And Victor at this practice  
17       reports to you that the doctor, in the middle  
18       of the comment, "had a few issues with our  
19       program, the screen is always going blue and  
20       they have to use the remote to get it back on  
21       channel quite often. Our program is stagnant  
22       and not very engaging and we keep sending  
23       Humira and Uloric brochures, which they have  
24       hundreds of. I thanked him for giving us the

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1 opportunity to remove our own equipment." And  
2 so, in this instance, do you recall if, in  
3 fact, HAN removed its own equipment?

4 A. I don't recall.

5 Q. That's what this sounds like,  
6 right?

7 A. That's what it sounds like the  
8 plan was, it doesn't mean that's what  
9 happened.

03:53 10 Q. Fair enough. Okay, just a few  
11 more.

12 (Exhibit 20 identified.)

13 Q. This is a September 7, 2011,  
14 e-mail from you to Catherine -- you're going  
15 to have to help me with the name, Goertzen?

16 A. Goertzen.

17 Q. Goertzen. Take whatever time  
18 you want to read it and let me know when  
19 you're ready.

03:54 20 A. Okay.

21 Q. What was Ms. Goertzen's position  
22 at the time?

23 A. She was relationship manager.

24 Q. Is that something different than

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1       you?

2           A.     Not what I was at this time, no.

3           Q.     And this chain is about a

4       comment that someone has forwarded to you  
5       from the CMS after entering it, or what's  
6       being forwarded to you?

7           A.     This is me forwarding a comment  
8       to Catherine.

9           Q.     So it may be a comment that you

03:55 10      put in?

11       A.     Correct.

12       Q.     Now, you're pulling it out of  
13      the database and sending it on. You have the  
14      capability to do that?

15       A.     Correct.

16       Q.     I've seen -- I'm not sure I'm  
17      going to find one, but I've seen a bunch of  
18      e-mails where someone is commenting on an  
19      entry they made, and then there are some  
03:55 20     instructions to immediately delete. Does  
21      that ring any bells with you?

22       A.     Oh, deleting comments?

23       Q.     Yeah.

24       A.     If there's error or duplication,

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1       that's a very rare instance, but that's  
2       simply if there's an error.

3           Q.       It wasn't some practice where  
4       you recorded the comment in one format and  
5       then put it in the database and deleted the  
6       original format?

7           A.       No.

8           Q.       Okay.

9           A.       All of the comments would be  
03:56 10      going in the same database and the same  
11     format.

12           Q.       I'll ask somebody else about  
13     that. Why were you bringing this one to Ms.  
14     Goertzen's attention?

15           A.       This was in her territory.

16           Q.       I see, okay. And you're asking  
17     her, if you get a call from this location  
18     that switched to ContextMedia, you would like  
19     a reason for the cancellation?

03:56 20           A.       Correct.

21           Q.       It sounds like you weren't able  
22     to capture one on your call?

23           A.       I --

24           Q.       -- you never called?

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1           A.       I didn't speak with anyone at  
2     the office. I simply left a voice message.

3           Q.       You tell Ms. Goertzen that she  
4     should ask the reason for cancel, and you  
5     tell her I'm sure the reason will be  
6     specialty, right?

7           A.       Yes.

8           Q.       You said that because you've  
9     heard that many times from practices, right?

03:57       10          A.       I said that since this is a  
11     diabetes clinic.

12          Q.       And you've heard that many times  
13     from diabetes clinics?

14          A.       I heard that in the past.

15          Q.       That was true as of September 7,  
16     2011?

17          A.       I -- yes.

18          Q.       And you also share with her that  
19     you've also heard that they will give us  
20     reasons that they prefer sound or a news  
21     ticker, right?

22          A.       Correct.

23          Q.       That's something you've heard  
24     before, right?

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1 A. Correct.

2 Q. But not as often as you've heard  
3 the specialty reason, right?

4 A. It's hard to say.

5 Q. Well, at least in the diabetes  
6 practices, wasn't that what the predominant  
7 reason was?

8 A. I'm not sure what the  
9 predominant reason was at that time.

03:57 10 Q. Then you say you, "usually  
11 record the conversations in case they have a  
12 lot to say," do you see that?

13 A. Yes.

14 Q. Did your company have the  
15 ability to record conversations with the  
16 practices back then?

17 A. They did.

18 Q. And do you still do that?

19 A. No.

03:57 20 Q. And for some period of time, did  
21 you regularly do it?

22 A. No, not regularly.

23 Q. You say usually?

24 A. I don't know that I usually or

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1 regularly did that. That's what this says,  
2 but there were -- there were instances where  
3 I recorded calls.

4 Q. During what time period, do you  
5 know?

6 A. In 2011, I'm not sure when it  
7 stopped.

8 Q. And who put that procedure in  
9 place, do you know?

03:58 10 A. I don't know.

11 Q. It was available to you and all  
12 of your peers, correct?

13 A. Correct.

14 Q. And did you let the practice  
15 know that you were recording a conversation?

16 A. No.

17 Q. To your knowledge, you never  
18 did?

19 A. On occasion.

03:58 20 Q. But the practice was not?

21 A. The -- on occasion we may have  
22 let them know.

23 Q. But usually you didn't?

24 A. Right.

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1                   Q.        Then what happened to those  
2 recordings?

3                   A.        They're somewhere in an e-mail  
4 or they may have been just deleted after,  
5 basically, the point of recording the  
6 conversation was just to be able to take good  
7 notes.

03:59             10          Q.        I see. Do you recall ever

9                   listening to a recorded conversation after  
10 you made good notes?

11                  A.        After, no.

12                  Q.        And I think I understand. The  
13 recording is more reliable than your memory  
14 or your handwritten notes in most cases,  
15 right?

16                  A.        Right.

17                  Q.        So to get in the database the  
18 most accurate complete information you could,  
19 you would record?

03:59             20          A.        Yes.

21                  Q.        And I take it that included  
22 practices that switched from HAN to  
23 ContextMedia, correct?

24                  A.        Correct.

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1 Q. Do you know why HAN stopped  
2 doing it?

3 A. I'm not sure.

4 Q. No one ever told you?

5 A. I'm not sure.

6 Q. No one ever told you --

7 A. I can't recall.

04:00 8 Q. No one ever told you that there

9 was concerns over the fact that it might be  
10 illegal to do that?

11 A. Right. And I'm not sure, I was  
12 just told to stop doing it.

13 Q. But you said right when I said  
14 illegal. Did you hear that too?

15 A. I have heard that, but I'm not  
16 -- that decision didn't come from me.

17 Q. Right.

18 A. I'm not sure.

04:00 19 Q. Does HAN have practices in the  
20 state of Illinois?

21 A. Yes.

22 Q. State of Washington?

23 A. Yes.

24 Q. State of Massachusetts?

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1 A. Yes.

2 Q. State of Pennsylvania?

3 A. Yes.

4 Q. Do you know if any of those  
5 recorded calls still exist?

6 A. Yes, they should, just --

7 Q. Go on, I didn't mean to cut you  
8 off.

9 A. There should be just what --  
04:01 10 what we've -- I think this was like three or  
11 so.

12 Q. There's three left?

13 A. Yeah, there was just a handful  
14 that came through, that you should have as  
15 far as I'm aware.

16 Q. Did those handful exist by  
17 accident?

18 A. No.

19 Q. I mean, was there some concerted  
04:01 20 effort to destroy all the others?

21 A. No.

22 Q. To your knowledge, has there  
23 been any sort of the law enforcement or  
24 governmental inquiry or investigation of HAN

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1 for the recording of phone calls?

2 A. Not to my knowledge.

3 (Exhibit 21 identified.)

4 Q. I think we are done with that  
5 one. Exhibit 21 is a February 3, 2012, e-mail  
6 exchange, first between you and Deborah Adams  
7 and Lori Smith, you are Lori Smith, excuse  
8 me, and you -- it's been a long day, and your  
9 boss, Heather McGauvran, right?

04:02 10 A. Correct.

11 Q. This is an example of a practice  
12 telling you they were switching because of  
13 specialty, right?

14 A. I'm sorry, can you ask that  
15 again?

16 Q. If you look at the comments at  
17 the bottom, this is an instance of a practice  
18 telling you they were switching because of a  
19 specialty reason?

04:03 20 A. Correct.

21 Q. And when you then write --

22 A. And this comment is from Deborah  
23 Adams saying that the diabetic doctor --

24 Q. I see, you're right. I stand

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1       corrected. And then you pass it on to your  
2       boss, right?

3                  A.       Yes.

4                  Q.       And whatever I was going to ask  
5       you about here, I'm curious. The last line  
6       of your statement to your boss says, "I feel  
7       like with DHN the reason for the switch is a  
8       little more obvious," do you see that?

9                  A.       Correct.

04:03       10                 Q.       Do you have any idea what you  
11       meant there?

12                 A.       Since this is a diabetes  
13       practice, they were looking for a diabetes --  
14       according to Debbie's notes here, the doc was  
15       a diabetes doc.

16                 Q.       Back in February 2012, were you  
17       aware of anybody in the marketplace, any of  
18       your competitors that had a diabetes  
19       condition specific product beside  
04:04       20       ContextMedia?

21                 A.       Not that I can recall.

22                 Q.       And you understood that was  
23       their first product, right?

24                 A.       Correct.

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1                   (Exhibit 22 identified.)

2                   Q.         This is an e-mail from you to  
3        Ms. Finley, your boss, on Valentine's day  
4        2012, right?

5                   A.         Yes.

6                   Q.         And did you field this call from  
7        the practice?

8                   A.         I called the practice.

04:05              Q.         You called the practice, that's

10       what I meant.

11                  A.         Yes.

12                  Q.         They told you that the practice  
13        wanted additional sound on the program?

14                  A.         That's what it says.

15                  Q.         And they wanted to know if you  
16        could provide additional sound, right?

17                  A.         It says that she had inquired in  
18        the past on sound.

04:05              Q.         And that she was told that the  
20        sound you currently provide is all that's  
21        available right now?

22                  A.         That's what it says.

23                  Q.         And then you write, "There are  
24        no notes in CMS about a sound inquiry,"

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1 questioning whether that really happened,  
2 right?

3 A. Correct.

4 Q. But what were the facts at that  
5 point in time, that is Valentine's day, 2012,  
6 did HAN offer additional sound than what she  
7 was getting?

8 A. It's hard to say if she had her  
9 volume up on her screen. A lot of times  
04:06 10 practices don't realize that their volume  
11 button is on their screen.

12 Q. But did you have sound then?

13 A. We had some sound.

14 Q. Some sound?

15 A. Yeah.

16 Q. But not as much as ContextMedia?

17 A. No.

18 Q. But you're saying they're all  
19 sound, correct?

04:06 20 A. Correct.

21 Q. And then, again, I'm curious  
22 about your opening comment, "On a roll L..."  
23 what do you mean by that?

24 A. I have no idea. Maybe that's a

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1       typo.

2           Q.      Pardon?

3           A.      Maybe that's a typo.

4           Q.      On a roll is a typo?

5           A.      Oh, the L...

6           Q.      Oh, okay. I thought that was  
7       you to Lori. What do you mean --

8           A.      Well, that's from me, so.

9           Q.      What do you mean by on a roll?

04:06 10          A.      This is probably a week that we  
11       received plenty of equipment from RHN or  
12       Context.

13          Q.      And it was also a week when  
14       plenty of the practices told you they decided  
15       to switch?

16          A.      I can't say.

17          (Exhibit 23 identified.)

18          Q.      This is 23. This is a call you  
19       had with the practice, right? On June 9,  
04:07 20       2011?

21          A.      Correct.

22          Q.      You write, "Site was serviced  
23       June 1 and lost connection June 3. Very  
24       frustrated with connection issues." You say,

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1     "The office is under the impression that they  
2     are under contract until October so they have  
3     not made the switch." She goes on to say --  
4     you go on to say, "After reviewing comments  
5     this office had a tech on site 7 times since  
6     January," right?

7                 A.     That's what it says.

04:08     Q.     So this is not a practice  
9     exaggerating to you about the service issues,  
10    this is you going into your database and  
11    finding out that they had a tech on site  
12    seven times in the last six months, right?

13                A.     Correct.

14                Q.     "Jackie agreed to plug us back  
15    in, but I do not see us staying plugged in,"  
16    do you see that?

17                A.     Yes.

04:08     Q.     Is what you're trying to  
19    communicate there is, the practice had, for a  
20    moment, agreed to stay with you, but you were  
21    pessimistic that you could save it?

22                A.     Can you ask that again?

23                Q.     Pardon?

24                A.     Can you say that again?

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1           Q.     Are what you're communicating  
2 there is that, for now the practice has  
3 agreed to stay with you, but you're  
4 pessimistic you're going to be able to keep  
5 them for the long term?

6           A.     Yes.

7           Q.     And do you know if this practice  
8 ever, in fact, switched? You probably don't  
9 know off the top of your head, do you?

04:09       A.     I don't know off the top of my  
11 head.

12          Q.     But that could be confirmed,  
13 right?

14          A.     Yes.

15          (Exhibit 24 identified.)

16          Q.     This is 24. This is, first, a --  
17 anyway, you can look at whatever you want on  
18 this, but in the middle near the top, you're  
19 forwarding a comment on a conversation you  
04:10       20 had with a practice to Amy Finley, right?

21          A.     Yes.

22          Q.     And you report what the practice  
23 said to you about that. And then you conclude  
24 the comment by saying, "Placing Sound inquiry

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1 and fielding cancel request to Amy F." Do  
2 you see that?

3 A. Yes.

4 Q. What does that mean, placing  
5 sound inquiry?

6 A. Noting that the practice was  
7 requesting sound.

8 Q. What was the purpose of doing  
9 that?

04:10 A. To determine the needs of our  
11 customers.

12 Q. So you're sort of keeping track  
13 of, as you said, the needs of your customers  
14 so that others in the company can look at  
15 that and figure out what to do?

16 A. Correct.

17 Q. At this point, you're not  
18 providing sound, right?

19 A. Correct.

04:11 20 Q. Was there some sort of -- tell  
21 me how you physically place a sound inquiry.  
22 Is that in the database you put something in?

23 A. Yes, and just to backup.

24 Q. Sure.

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1           A.     We did offer some sound, but not  
2 full sound. The placing of sound inquiry is  
3 an order that we place in our database.

4           Q.     In the same database as CMS?

5           A.     Em-hm.

6           Q.     But that's a different field?

7           A.     It's a -- it's a order, I don't  
8 know. It's not a comment, it's an order that  
9 can be tracked.

04:11       10          Q.     Is it a column on Exhibit 17?

11          A.     No, no. This would be -- this  
12 would be not specific to the location  
13 information, but more like the -- we  
14 encountered one other order, the WR service  
15 order that you asked about. That's that same  
16 type of tracking information.

17          Q.     So if you were going to the  
18 database and tried to determine every  
19 practice for which a sound inquiry had been  
04:12       20 placed by you or one of your peers, what  
21 would come up on the screen?

22          A.     It depends on how you pull the  
23 report. What you want to come up on the  
24 screen.

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1           Q.       Can you pull up a report --  
2       well, can you pull up a report like I just  
3       said, if you do the right inquiries, which  
4       said, list all the practices for which you  
5       made sound inquiries?

6           A.       Yes.

7           Q.       It sounds like a very robust  
8       database.

9           A.       Yes.

04:13     10          Q.       Could you pull up a list of  
11       practices who said they wanted longer loops?

12          A.       No.

13          Q.       What other kinds of lists could  
14       you pull up where you're tabulating feedback  
15       of the client's needs?

16          A.       There would be no sound,  
17       additional languages, additional programs,  
18       additional displays, video. I believe that's  
19       all of them.

04:14     20          Q.       When you said -- I think I  
21       understood all of those except one;  
22       additional displays, what does that mean?

23          A.       For the exam room, if they  
24       wanted more displays but we weren't able to

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1 provide them.

2 Q. More than one, for example?

3 A. Correct.

4 Q. Why were you not able to provide  
5 more than one?

6 A. Just the restraints of the  
7 program, not being able to incur the cost of  
8 the displays.

9 Q. Okay.

04:14 10 A. Or have the display, we might  
11 not have the displays on hand, you know,  
12 enough inventory.

13 Q. Were you ever able to  
14 accommodate the request for additional  
15 displays?

16 A. In some cases.

17 Q. But most you weren't?

18 A. Right.

19 Q. Because the initial display  
04:14 20 might mean that you don't have -- for one  
21 practice might mean you don't have one at all  
22 for another?

23 MR. BERNAY: Objection to the  
24 form.

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1           Q.     It's a confusing question. Did  
2 you understand it?

3           A.     No.

4           Q.     Okay. Meaning that if you, in  
5 these instances, provided an additional  
6 display to a single practice, you might be  
7 sacrificing the ability to provide a display  
8 to a new practice?

9           A.     I --

04:15 10          Q.     Don't let me put words in your  
11 mouth, okay?

12         A.     No, I -- is there a -- can you  
13 ask it in a different way?

14         Q.     I guess I'm trying to understand  
15 the constraints of -- aside from additional  
16 inventory, maybe that's just it and you have  
17 nothing else to say.

18         A.     There are restraints, but more  
19 than what you mentioned.

04:15 20          Q.     Tell me what those are.

21         A.     One restraint would be not being  
22 able -- not having the inventory, another  
23 would be not having the ability to incur the  
24 cost of additional displays, and then

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1 servicing those displays as a result going  
2 forward.

3 Q. Okay. Was it rare you were able  
4 to accommodate a request for additional  
5 displays given all these restraints?

6 A. It has changed throughout my  
7 tenure.

8 Q. How about in 2011?

9 A. At that time, we were able to

04:16 10 accommodate more displays than --

11 Q. In 2012 was less?

12 A. -- 2012.

13 Q. 2012 was less?

14 A. Yes.

15 Q. How about 2013?

16 A. I'd say less than 2011.

17 (Exhibit 25 identified.)

18 Q. This is a somewhat lengthy  
19 e-mail exchange, last e-mail being February  
04:17 20, it looks like the first e-mail was one  
21 from you on page 4 of this document, dated  
22 February 15, 2013. I'd like to work from that  
23 first e-mail forward.

24 A. Okay.

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1           Q.     Is this an e-mail you saw  
2 recently?

3           A.     No.

4           Q.     The first e-mail, Friday,  
5 February 15, 2013, you're writing Amy Finley,  
6 Kelly Schulkers and Lisa Grippo, copying  
7 Jennifer Hartfiel and Allison Griffith,  
8 right?

9           A.     Yes.

04:18 10          Q.     We know who Amy Finley was.  
11 I've seen Lisa Grippo's name a lot, but I  
12 haven't asked you, what was her position?

13          A.     She was in some type of sale  
14 position.

15          Q.     Not in your group?

16          A.     Not on my team, correct.

17          Q.     Kelly Schulkers, did I ask you  
18 about her before?

19          A.     Kelly Schulkers is over the  
04:18 20 field sales support, so her team handles any  
21 kind of installations and new practices.

22          Q.     How about Jennifer Hartfiel?

23          A.     Jennifer Hartfiel is part of the  
24 field sales team.

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1 Q. And Allison Griffith?

2 A. Allison is part of sales as  
3 well.

4 Q. This is about a practice that  
5 you refer to as Lakeside, right?

6 A. Correct.

7 Q. Talked to them, they wanted to  
8 go to another program. I'm in the first  
9 paragraph down towards the end of it, "The  
04:19 10 group has acquired 11 new offices and we  
11 could not promise programs for these 11, plus  
12 the CCN office, and our competitor could," do  
13 you see that?

14 A. Yes.

15 Q. Is this an example of being  
16 handicapped by the inability to provide  
17 additional displays?

18 A. No.

19 Q. What is this then? Why couldn't  
04:19 20 you accommodate the request for 11 new  
21 offices?

22 A. Some of those offices were  
23 specialities outside of our programs.

24 Q. I see. Dictated by the

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1       advertisers?

2           A.     Correct.

3           Q.     Eleven offices is a lot, right?

4           A.     Right.

5           Q.     I mean, that's an attractive  
6       practice, right?

7           A.     Right.

04:20       Q.     And at the end of that paragraph  
9       you write, "To my dismay, I learned that the  
10     competitor was ContextMedia," do you see

11     that?

12           A.     Yes.

13           Q.     Why were you dismayed?

14           A.     Just it's -- I guess that's just  
15     how I was feeling that day.

16           Q.     If you don't remember, you don't  
17     have to make stuff up.

18           A.     Yeah.

19           Q.     It's a long time ago.

04:20       A.     I'm not sure, yeah.

21           Q.     In the next paragraph it looks  
22     like you're trying to save her, you can read  
23     as much as you want, but get down to the  
24     middle, "Pam said that the decision has

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1 already been made and contracts were signed, "

2 do you see that?

3 A. Yes.

4 Q. And then you write, "I explained  
5 to her that often, in our business, the  
6 contracts are not always binding and I just  
7 want to make sure that the decision makers  
8 know about our suite of products before we  
9 begin removing the monitors," do you see

04:21 10 that?

11 A. Yes.

12 Q. So you were suggesting to her  
13 that whatever she had signed with  
14 ContextMedia may not be binding?

15 A. That's what it says.

16 Q. And you're asking for the  
17 opportunity to talk to the decision makers to  
18 try to save the practice even though she's  
19 just told you she signed contracts with  
04:21 20 ContextMedia?

21 A. Correct.

22 Q. And at this point in time,  
23 February 2013, you've been in the industry  
24 for about three years, right?

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1 A. Yes.

2 Q. Fair amount of experience,  
3 right?

4 A. Yes.

5 Q. Fair amount of an understanding  
6 about the contract offering your competitor  
7 is offering?

8 A. Not an understanding about the  
9 competitor's contracts.

04:21 10 Q. But you reached a view after  
11 three years that contracts aren't always  
12 binding in the industry, right?

13 A. That this -- the -- that's what  
14 I was told.

15 Q. Who told you?

16 A. I don't recall.

17 Q. Somebody at HAN, right?

18 A. Yes.

19 Q. It wasn't somebody at  
04:22 20 ContextMedia?

21 A. No.

22 Q. Have you ever talked to anybody  
23 from ContextMedia?

24 A. Not that I can recall.

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1           Q.        Okay. To your knowledge, did HAN  
2 ever enforce its enrollment agreements? You  
3 know what I mean by enforce, right?

4           A.        Yes.

5           Q.        Did they ever threaten to sue a  
6 practice?

7           A.        Not to my knowledge.

8           Q.        Did it ever sue a practice?

9           A.        Not to my knowledge.

04:22 10          Q.        Do you know what a cease and  
11 demand letter is?

12          A.        Now I do.

13          Q.        To your knowledge, did HAN ever  
14 send a practice a cease and demand letter,  
15 stop what you're doing, you can't do that?

16          A.        Not to my knowledge.

17          Q.        And then this is a long e-mail  
18 you wrote. Flipping on over to the next page,  
19 first paragraph, last sentence, you say, "I  
20 explained coexisting and told her that we  
21 would never tell her how to run a practice or  
22 organization in that manner, and I am shocked  
23 that they do." This is in part an explanation  
24 of your pitch to this practice in order to

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1 try to save it that the HAN product, you  
2 would allow the HAN product to coexist with  
3 the ContextMedia product, right?

4 A. Correct.

5 Q. Do you know if HAN was able to  
6 count with advertisers in the same way if the  
7 practice only had HAN product, if it had  
8 coexisting with ContextMedia product?

9 A. I don't know that information.

04:24 10 Q. "I asked her to please give us  
11 the chance to remove our equipment," and she  
12 allowed you to do that, right? She agreed?

13 A. Correct.

14 Q. And you said, "I explained that  
15 we would love to partner with them and  
16 coexisting would give her the chance to try  
17 both programs," right?

18 A. Yes.

19 Q. And then she noted, apparently  
04:25 20 based on what you told her, "This is not an  
21 option," right?

22 A. Yes.

23 Q. Did you know it was contrary to  
24 the enrollment terms of the agreement that

Lori Smith, 3/18/2014

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1       she'd just signed with ContextMedia for you  
2       to coexist?

3                 A.       I'm sorry?

4                 Q.       Did you know it was a violation  
5       of the terms of the enrollment agreement,  
6       which she had just signed with ContextMedia  
7       for HAN to coexist with the ContextMedia  
8       offering?

9                 A.       No.

04:25         10          Q.       And then you, last paragraph,  
11       second to last sentence, write,  
12       "Unfortunately, I think overlooking the CCN  
13       office and not guaranteeing that we can  
14       accommodate expanding into all of their newly  
15       acquired offices was our shortfall," right?

16                 A.       Correct.

17                 Q.       That was your assessment of why  
18       you were not able to save her, right?

19                 A.       Yes.

04:26         20          Q.       But you're not going to give up,  
21       right? You say lastly, "Personally, I'm not  
22       ready to throw in the towel here, but it will  
23       be a struggle to get the decision maker to  
24       reverse this decision," right?

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Lori Smith, 3/18/2014

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1 A. Yes.

2 Q. But you were never able to do  
3 so, right?

4 A. We were.

5 Q. You were?

6 A. Yes.

7 Q. So you saved this practice?

8 A. Yes.

9 Q. Okay.

04:26 10 A. I didn't personally, but I  
11 believe Chris Martini did.

12 Q. And so the HAN equipment was  
13 never taken down?

14 A. Correct.

15 Q. And the ContextMedia equipment  
16 was never put up?

17 A. Correct.

18 Q. And that happened after you told  
19 them that contracts were not always binding  
04:27 20 right?

21 A. That's what this says.

22 Q. And Amy Finley writes back,  
23 "Great job Lori! Thank you for contacting  
24 her," right? It's at the top of page 4.

Lori Smith, 3/18/2014

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1 A. Yes.

2 Q. And at this point in time, since  
3 it's four minutes after your e-mail, the  
4 practice hasn't been saved yet, has it?

5 A. Correct.

6 Q. Who is -- you say Chris Martini?

7 A. Correct.

8 Q. Who is he or she?

9 A. He is in sales.

04:27 10 Q. In sales. Do you know how he was  
11 able to save these 11 locations?

12 A. I'm not sure.

13 Q. And Ms. Finley, when she writes  
14 back to you and says, "Great job Lori," she  
15 copies Kelly Schulkers, Lisa Grippo, Jennifer  
16 Hartfiel, Allison Griffith and Chris Martini,  
17 the same group you sent, but adding Mr.  
18 Martini, right?

19 A. Correct.

04:28 20 Q. And she doesn't say to you in  
21 this e-mail that you should not be saying to  
22 practices that contracts are not always  
23 binding, does she?

24 A. No, she does not.

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1 Q. Did anyone ever admonish you not  
2 to say that?

3 A. No.

4 Q. And going along, proceeding  
5 forward in the e-mail chain -- actually, go  
6 to the last page. You respond February 18,  
7 2013, at 9:33 a.m. after some more e-mails,  
8 you can look at it. You've been asked --  
9 you've been asked whether you scheduled the  
04:29 10 removals yet, right?

11 A. I'm sorry, oh, I see here.

12 Correct.

13 Q. And then you -- actually, that's  
14 what you said, "Correct, I did not schedule  
15 any removals. When I spoke with her on  
16 Friday, I set the expectation that we would  
17 follow up this week." "Lisa, since you were  
18 out this week, either Chris or I will reach  
19 out to her," that is Lisa's not responding --  
04:30 20 I'm sorry. Amy is responding, "Lisa, since  
21 you are out this week, either Chris or I will  
22 reach out to her this week and we will go  
23 from there." That's kind of where it gets  
24 left, right?

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1 A. Yes.

2 Q. Do you know what period of time  
3 after this e-mail exchange it took Mr.  
4 Martini to get out to the practices?

5 A. I'm not 100 percent certain.

6 Q. Do you know how long it took for  
7 him to -- actually, for the practice to  
8 change its mind?

9 A. I'm not 100 percent certain.

04:30 10 Q. When you say you're not  
11 100 percent certain, that tells me you know  
12 something.

13 A. I know it was pretty quickly.

14 Q. Very quickly?

15 A. It was -- I want to say within  
16 the week.

17 Q. Do you know how he was able to  
18 do that?

19 A. I'm not sure.

04:30 20 Q. Do you know if he offered any  
21 incentives to the practice?

22 A. I believe he discussed the CCS  
23 program with our -- with Pam.

24 Q. Let's mark one more.

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1                   MR. BERNAY: Dick, can we take a  
2 break?

3                   MR. O'BRIEN: Sure.

4                   (Break taken.)

5                   Q.       Before I mark this next one. I  
6 guess I should ask you about your background.  
7 You've been with ContextMedia since 2010,  
8 right?

9                   A.       PatientPoint.

04:39 10                  Q.       Would you like a job? Sorry.  
11 You've been with -- that was a trick  
12 question, double agent.

13                  You've been with HAN since 2010,  
14 and before that, what did you do?

15                  A.       I was a manager at Hobby Lobby.

16                  Q.       What's Hobby Lobby?

17                  A.       It's a craft store.

18                  Q.       Here in Cincinnati?

19                  A.       Yes.

04:40 20                  Q.       How long did you do that?

21                  A.       Eight years.

22                  Q.       And then did you have employment  
23 before that?

24                  A.       That was my first job.

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1 Q. First job?

2 A. Well, I mean, aside from when I  
3 was a minor working at Arby's and McDonald's.

4 Q. Did you go to high school here  
5 in Cincinnati?

6 A. Yes.

7 Q. Do you have any schooling after  
8 that?

9 A. Ohio State.

04:40 10 Q. Ohio State. Did you complete a  
11 degree of program there?

12 A. No.

13 Q. How many years did you study  
14 there?

15 A. Three.

16 Q. Thinking about going back some  
17 day?

18 A. Maybe.

19 Q. What was your area of focus when  
04:40 20 you were there?

21 A. Consumer affairs.

22 Q. Any sort of additional training,  
23 specialized courses, things like that?

24 A. No.

Lori Smith, 3/18/2014

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1 Q. Any professional certificates or  
2 anything like that?

3 A. No.

4 (Exhibit 26 identified.)

5 Q. Are you aware of a folder or  
6 file HAN maintains on each of its  
7 competitors?

8 A. No.

9 Q. Flip through --

04:41 10 A. I know in the past we had  
11 information on Accent Health, but it wasn't a  
12 folder. It was just kind of what their  
13 program is.

14 Q. How was that maintained?

15 A. It wasn't. That information  
16 is -- was just dumped, and to my knowledge,  
17 it wasn't -- it was never maintained.

18 Q. Dumped on a drive somewhere or a  
19 server?

04:42 20 A. Yes.

21 Q. But it wasn't -- you had some  
22 stuff on that particular competitor, but to  
23 your knowledge, there wasn't some organized  
24 effort to gather information on all

Lori Smith, 3/18/2014

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1 competitors?

2 A. Correct.

3 Q. I take it this particular file  
4 I've just given you, you have not seen  
5 before?

6 A. Correct.

7 Q. All right. I don't have any  
8 questions.

9 (Exhibit 27 identified.)

04:42 10 I'll represent to you this was  
11 produced by Tom a couple hours ago. And I'm  
12 led to believe that this is the document that  
13 tracks various reasons practices leave HAN.  
14 Have you seen a report in this format before?

15 A. Yes.

16 Q. And is the thing you told me  
17 about earlier today?

18 A. Yes.

19 Q. Let's look at the first page,  
04:43 20 and it says, "WRN only" that means waiting  
21 room products only, correct?

22 A. Correct.

23 Q. Can you interpret this graph for  
24 me? What it means to be on the green and

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1 what it means to be on the red? I mean, I can  
2 read what it means, but, for example,  
3 advertising, it looks like it's nearly  
4 negative 4 percent. Do you know what that  
5 means? Can you translate that for me?

6 A. I don't know. Aside from  
7 reading. Aside from reading here what you  
8 can read.

9 Q. Do you know what -- do you know  
04:43 10 what it means to say a practice churned due  
11 to advertising?

12 A. Yes.

13 Q. What does that mean?

14 A. That means that they elected to  
15 cancel the program due to advertising.

16 Q. Due to the fact that you had  
17 advertising in the program?

18 A. Yes.

19 Q. Would that also capture  
04:44 20 cancellation due to the amount of advertising  
21 in relation to the amount of content?

22 A. That would -- do you mean -- can  
23 you ask that again?

24 Q. Yeah, it sounds like when you

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1 just told me, this intends to capture  
2 practices who left HAN because they didn't  
3 want advertising in the waiting room?

4 A. Correct.

5 Q. Does it also capture practices  
6 who left HAN because they didn't like the  
7 ratio of advertising to content in HAN's  
8 products?

9 A. As long as that was the only  
10 clear cancellation reason.

11 Q. And in your experience, that has  
12 been a reason from time to time, correct?

13 A. Correct.

14 Q. Is that what this is meant to  
15 do, building on something you just told me,  
16 try to capture the reasons for churn when you  
17 see a single, clear reason?

18 MR. BERNAY: Object to the form.

19 You can answer.

04:45 20 A. When -- can you ask that again?

21 Q. Yeah. Does this document intend  
22 to record as reasons for churn only occasions  
23 where a reason is the sole reason given?

24 A. This --

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1                   MR. BERNAY: Same objection. You  
2 can answer.

3                   A.       This document would record the  
4 reason code, which would be applied -- well,  
5 I'm not sure.

6                   Q.       So, for example, if a practice  
7 said I'm leaving because I don't like the  
8 ratio of HAN's advertising to its contend,  
9 and I'm also leaving because I like the  
04:46 10 competitor's product better, would that --  
11 how would that fall on this chart?

12                  A.       Depending on -- depending on  
13 how -- how the relationship manager  
14 interprets the comments from the practice,  
15 whatever their main reason is for leaving.

16                  Q.       So judgment is exercised as to  
17 what the main reason is and then you assign  
18 that to this chart?

19                  A.       Correct.

04:46 20                  Q.       And who does that? Do multiple  
21 people make those choices?

22                  A.       Yes.

23                  Q.       Are you one of them?

24                  A.       Yes.

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1 Q. Who else?

2 A. All of the relationship  
3 managers.

4 Q. Okay. All your peers?

5 A. Em-hm.

6 Q. How does your judgment that,  
7 say, a practice switched from HAN or left HAN  
8 because it didn't like the advertising ratio,  
9 how do you get that judgment into this  
04:47 10 program?

11 A. I mean, this is just a snapshot.  
12 Your judgment would come from the database  
13 and the comments in the database.

14 Q. I guess what I'm trying to ask  
15 if however unartful fashion as I am, how does  
16 something get from comments in the database  
17 to appearing as a statistical item on this?

18 A. As a practice cancels, we have  
19 to collect a reason.

04:47 20 Q. I see. So, for example, all of  
21 the practices on Exhibit 17, or Exhibit 18 --  
22 strike that.

23 All of the cancellations from  
24 HAN, as reflected on Exhibit 17 or Exhibit

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1       18, would have a reason selected by you or  
2       your team for input into this document?

3                  A.        Correct.

4                  Q.        And what use is made of this  
5       document by HAN?

6                  A.        Knowing where we stand as far as  
7       where our churn points are.

8                  Q.        Do you receive any training, you  
9       and your team, as to how to exercise your  
10      judgment to pick the main reason, or are you  
11      just sort of left to your common sense?

12                 A.        It's -- we receive training.

13                 Q.        On this subject?

14                 A.        On -- I mean, it's not an  
15      ongoing training.

16                 Q.        But you received training at  
17      some point --

18                 A.        Yes.

19                 Q.        -- that told you how you should  
20      conduct yourself and make judgments in order  
21      to input main reasons for cancellation into  
22      Exhibit 27?

23                 A.        Correct.

24                 Q.        Were there written materials

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1 around that training?

2 A. Yes.

3 Q. When did that training for you  
4 take place?

5 A. In 2010.

6 Q. Was that like a classroom  
7 setting with you and others?

8 A. Myself and one other.

9 Q. And is it your understanding  
04:49 10 that, as people have been added to your team  
11 over time, they have been similarly trained?

12 A. Yes.

13 Q. Do you recall what those  
14 training materials look like? Not look like,  
15 that's a bad question. Do you recall the  
16 content of them?

17 A. Just specifically related to  
18 this?

19 Q. Yes.

04:49 20 A. It would, basically, walk  
21 through the cancel process and the steps of  
22 the cancel.

23 Q. And these training materials  
24 helped you understand how to do this?

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1 A. Yes.

2 Q. One of the codes is advertising,  
3 we talked about that. Another one is  
4 brochures, what does that mean?

5 A. If an office feels like the  
6 brochures are cluttering their office or  
7 becoming a distraction to patients, that's  
8 when brochures would be selected.

9 Q. And competitor, is that all  
04:50 10 switches to competitors, or just ones where  
11 someone made the judgment that a competitor's  
12 offering was better?

13 A. That would be that the practice  
14 is cancelling and the number one reason is  
15 because of a competitor.

16 Q. Could there be cancellations  
17 where a HAN practice went to a competitor but  
18 nonetheless that cancellation was assigned  
19 one of these different reasons?

04:51 20 A. It's not likely, but it's  
21 possible.

22 Q. In other words, they could say  
23 I'm going to a competitor, but my real reason  
24 was I didn't like the brochures cluttering my

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1 office or something like that?

2 A. Yes.

3 Q. But it's your belief that, in  
4 most cases, if there was a cancellation  
5 because the practice was going to a  
6 competitor, they would go into that field?

7 A. Most of the time.

8 Q. Back on the first page, I  
9 don't -- and maybe tell me if you've already  
04:52 10 answered this. I don't understand -- well, I  
11 did ask you this. You don't understand the  
12 green versus red, how something could be a  
13 negative percent?

14 A. Correct.

15 Q. I don't think we see that later,  
16 it's only that one page. Can I turn your  
17 attention now -- I'm wrong, there's some  
18 more. Turn your attention to 5746, that's  
19 the number down in the lower right-hand  
04:53 20 corner. Here's another one where we've got  
21 some negatives. Again, this doesn't help you  
22 explain to me why that's so?

23 A. No.

24 Q. If you were to --

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1           A.     Wait a minute. It's a  
2 comparison, but.

3           Q.     A comparison to what?

4           A.     The 2010 versus 2011.

5           Q.     Ah.

6           A.     For reasons code competitor, the  
7 short green bar left of the center axis  
8 indicates.

9           Q.     I see. If you were -- at the end  
04:53 10 of the deposition today, if you were to go  
11 back to your office and wanted to know more  
12 about this document and what it means and how  
13 it's maintained, who would you ask first?

14          A.     Heather or Amy.

15          Q.     Amy Finley?

16          A.     Em-hm.

17          Q.     Again, on 5746, it breaks out,  
18 and I think you said earlier today this could  
19 be done, the various elements of competitor  
04:54 20 cancellations that year, right?

21          A.     Correct.

22          Q.     And it looks like, at least  
23 during this time period, your biggest  
24 competitor was television, right?

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1 A. Yes.

2 Q. What is "39 lost to practice on  
3 PGM"?

4 A. Program.

5 Q. What does that mean?

6 A. It's a system or a doctor's  
7 office decides to create their own  
8 educational program for the waiting room, or  
9 that could also apply to -- oh, this is WRN  
10 only, yeah.

11 MR. O'BRIEN: All right. Can I  
12 have a few minutes to look over my notes, and  
13 I think I'm done.

14 MR. BERNAY: Sure. We can take a  
15 quick break for a few minutes.

16 (Break taken.)

17 MR. BERNAY: Anything else?

18 MR. O'BRIEN: I have no further  
19 questions. Thank you for your time today.

04:59 20 DIRECT EXAMINATION

21 BY MR. BERNAY:

22 Q. I just have a few questions,  
23 follow up on a few things you said this  
24 afternoon. You testified earlier that

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1     practices have -- you said that PatientPoint  
2     believes could switch from them for a number  
3     of reasons. Is it your understanding that  
4     the reason proffered in a lot of these  
5     comments, it's just one of many reasons that  
6     a practice switches?

7                 A.     Yes.

04:59     8                 Q.     And so is it not so much that  
9                 the practice is being untruthful when they  
10                call in, but that the practice is being  
11                incomplete?

12                A.     Yes.

13                Q.     And that they omit information  
14                that may be responsive to the questions that  
15                you're asking?

16                A.     Correct.

05:00     17               Q.     And when the practice calls,  
18                you're not looking for a complete and full  
19                explanation of the reasoning behind the  
20                switch out?

21                A.     Correct.

22                Q.     And it's not often the case that  
23                you ask follow-up questions to get at other  
24                motives or reasons for the switch out?

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1           A.       Only the questions that are in  
2       that first conversation.

3           Q.       Okay. And you're not --  
4       especially early on in, let's say 2011, you  
5       are not asking what a practice was told by  
6       the competitor; is that right?

7           A.       Correct.

8           Q.       And one of the things we haven't  
9       mentioned today, were you often told by  
05:00 10      PatientPoint practices that switched to  
11     Healthy Advice -- I'm sorry, switched to  
12     ContextMedia, that they were -- ContextMedia  
13     told those practices that Context was  
14     authorized to remove PatientPoint's  
15     equipment?

16          A.       Yes, correct.

17          Q.       And do you know, does  
18      PatientPoint authorize Context to remove its  
19      equipment?

05:01 20          A.       No.

21          Q.       You said earlier that you heard  
22      that from a number of practices?

23          A.       Yes.

24          Q.       Do you believe that all or

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1     almost all of the practices that switched  
2     were told that Context had authorization to  
3     remove?

4                 A.     Yes.

5                 Q.     You said earlier that -- and I'm  
6     paraphrasing, that sometimes if you were in a  
7     dialogue with a conversation during a switch  
8     out, that you would wait more than 30 days to  
9     schedule a removal?

05:02         A.     I'm sorry?

11                Q.     You said earlier, and I'm  
12     paraphrasing your testimony, that if you were  
13     in a dialogue with a practice over their  
14     cancellation or switch out, you would wait  
15     more than 30 days to schedule a removal?

16                A.     We would wait until they  
17     wanted -- yes, till they wanted the equipment  
18     removed.

19                Q.     So if a practice called and said  
20     we want this out and there was no indication  
21     that you'd be able to save the practice, you  
22     would schedule the removal?

23                A.     Yes.

24                Q.     And is it true that, often, the

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1 fact that the practice would call ahead was  
2 something of a luxury, there was a period of  
3 time that you found out about a switch out  
4 because the equipment showed up at your  
5 offices?

6 A. Yes.

7 Q. And then you would have to call  
8 the practice to find out what happened?

9 A. Yes.

05:03 10 Q. And I'm referring to  
11 ContextMedia to be sure.

12 A. Correct.

13 Q. So sometimes when a competitor  
14 switched to ContextMedia, the equipment would  
15 simply show up at the office without a  
16 courtesy phone call or anything else?

17 A. Yes, when a practice switched to  
18 ContextMedia, the equipment would sometimes  
19 just ship.

05:03 20 Q. You mentioned very early on this  
21 afternoon in looking at the practices shown  
22 in column E on Exhibit 18, you noticed that  
23 there were two that were not there, I think  
24 you said they were Health Media Network and

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1 Kids Care TV?

2 A. Yes.

3 Q. Is that right?

4 A. Yes.

5 Q. And do you have -- are they  
6 competitors of ACN or PCN?

7 A. The Health Media Network has an  
8 arthritis program, so, yes.

9 Q. What about Kids Care TV?

05:04 10 A. And Kids Care is a pediatric  
11 program, so not directly.

12 Q. And is Health Media Network a  
13 newer competitor?

14 A. Yes.

15 Q. And do you have any reason to  
16 believe that any Healthy Advice practice  
17 switched to Health Media Network or Kids Care  
18 TV during the dates that this spreadsheet  
19 represents? And I'll tell you that I believe  
05:04 20 the date range is July 2010 through March 20,  
21 2013.

22 A. No.

23 Q. So as far as you know, this  
24 spreadsheet is a complete list of all

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1     practices that switched to competitors  
2     besides ContextMedia for that date range?

3                 A.     As far as I'm aware, yes.

4                 Q.     If you look now that we're in  
5     Exhibit 18, Mr. O'Brien referenced a comment  
6     with you, and one was at 38. So if you go to  
7     row 38. And I believe you were asked a  
8     question that if this practice was saved, why  
9     was it inputted with the cancellation code?

05:05         A.     Yes.

11                Q.     And if you look at the comment  
12     itself, I'm going to start -- I think I'm  
13     going to pick up where Mr. O'Brien left off.  
14     You said, "They are removing all WRN and ERN;  
15     only keeping PWR," can you explain what that  
16     sentence means?

17                A.     So this office is cancelling the  
18     waiting room and exam room program, but  
19     keeping the practice wire back office screen.

05:06         Q.     So that office did have Healthy  
21     Advice at the time of cancellation in 2011?

22                A.     Yes.

23                Q.     So even though they were keeping  
24     the practice wire screen, this was still a

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1 cancellation?

2 A. Correct. They were cancelling  
3 the PRM program.

4 Q. If you look at No. 60, same  
5 exhibit. You were asked about this entry from  
6 Prime Health Network. It says, "Spoke with  
7 Lisa Fini who said that she has been OM for  
8 two months and the monitor has never worked.  
9 She does not want to have two monitors that  
10 are playing in the waiting room." If a  
11 monitor does not work, it would stop sending  
12 a heartbeat; is that correct?

13 A. Correct.

14 Q. And so you would have -- Healthy  
15 Advice would have noticed that the monitor  
16 was not working?

17 A. Correct.

18 Q. Is there a procedure in place  
19 when a monitor fails to register a heartbeat?

20 A. Yes.

21 Q. What is that procedure?

22 A. The field services digital team  
23 will call if the screen has not connected for  
24 seven days. At which time, they'll

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1       troubleshoot and possibly send service if  
2       needed.

3                   Q.       Is it your experience that  
4       sometimes practices believe that the machine  
5       is broken when sometimes the issue is  
6       something as simple as changing the channel  
7       to get it correct?

8                   A.       Yes.

9                   Q.       Input on?

05:07 10                  A.       Em-hm.

11                  Q.       So it's possible that practice  
12       thinks something is broken when it's not?

13                  A.       Correct.

14                  Q.       And that Healthy Advice or  
15       PatientPoint now would have no notice of  
16       that? Meaning that the heartbeat would still  
17       register?

18                  A.       Yes, if it's simply a off  
19       channel or a monitor issue.

05:08 20                  Q.       If you look at Exhibit 19. You  
21       were -- if you go to the second page.

22                  MR. O'BRIEN: Give me a second.

23                  MR. BERNAY: Sorry, I'll wait.

24                  Q.       Is the e-mail --

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1                   MR. O'BRIEN: Let me see that,  
2 what it looks like.

3                   MR. BERNAY: Scott Landon.

4                   MR. O'BRIEN: Oh, okay. Got it.

5                   Q.       And on the second page, you'll  
6 notice that I think Mr. O'Brien asked you  
7 about a sentence that reads, "We have hard  
8 copies of ContextMedia's installation  
9 instructions which includes inventory of the  
05:09 10 items they ship," do you remember that?

11                  A.       Yes.

12                  Q.       And if you turn to Exhibit 26  
13 which is the competitor info folder. And if  
14 you -- I'll direct you to a certain page,  
15 it's page 3182. This is a document that looks  
16 like the 2011 operations manual; is that  
17 right?

18                  A.       For?

19                  Q.       For ContextMedia.

05:10 20                  A.       Yes.

21                  Q.       Do you know if there's a note on  
22 top of that, it looks like it's a marginalia  
23 or a sticky that says "Returned with our  
24 equipment."

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1 A. Yes.

2 Q. Is it your understanding that  
3 this training manual was returned in the same  
4 box as Healthy Advice's equipment in 2011?

5 A. Yes.

6 Q. And that's how Healthy Advice  
7 came in possession of installation  
8 instructions?

9 A. Yes.

05:10 10 Q. And then, finally, you said at  
11 one point this afternoon that it would be  
12 fair to say that -- I don't know exactly what  
13 you said, but that practices -- some  
14 practices left for reasons of fair  
15 competition and some practices switched from  
16 Healthy Advice to ContextMedia for reasons of  
17 unfair competition.

18 A. Correct.

19 Q. Is there any way to quantify  
05:11 20 actually how many practices you think  
21 switched on the basis of fair competition?

22 A. I don't have a number, but I  
23 would imagine that the number that switched  
24 due to fair competition was very low.

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1                   MR. BERNAY: I have no further  
2 questions.

3                   MR. O'BRIEN: I've got a lot.

4                   RECROSS-EXAMINATION

5   BY MR. O'BRIEN:

6               Q.     Ms. Smith, you just gave a  
7 series of answers and responses to a series  
8 of questions from your lawyer, right?

9               A.     Correct.

05:11          10       Q.     Those are questions and answers  
11 that the two of you just discussed and  
12 rehearsed in the hallway, right?

13              A.     No.

14              Q.     You didn't discuss --

15              A.     We discussed, we didn't  
16 rehearse.

17              Q.     So I got part of it wrong. You  
18 discussed what questions he was going to ask  
19 you, right?

05:12          20       A.     We just -- yes.

21              Q.     He understood what answers you  
22 were going to give, right?

23              A.     (Witness nods head  
24 affirmatively.)

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1           Q.     And the last one was that, with  
2 respect to the percentage of practices that  
3 switched from ContextMedia to HAN due to fair  
4 competition, you said, "I would imagine that  
5 the percentage would be very low," right?

6           A.     Yes.

05:12       Q.     Do you recall testimony just an  
10 hour or so ago in response to a question of  
11 mine where you said you had no way of  
12 allocating the number of practices that  
13 switched due to fair competition versus the  
number of practices that switched due to what  
you believed was improper conduct?

14          A.     Correct.

15          Q.     And that was truthful testimony,  
16 wasn't it?

17          A.     Yes.

18          Q.     And when you say you imagine it  
19 was very low, that's all you're doing is  
05:12       20 imagining, right?

21          A.     No.

22          Q.     Well, those were your words,  
23 that you imagined, right?

24          A.     I don't imagine that they're

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1 very low, they are --

2 Q. That's what you just said,  
3 right?

4 A. They are -- well, the numbers  
5 are low.

6 Q. How do you know that?

7 A. Through our documents, through  
8 our spreadsheet, speaking with practices and  
9 hearing the same themes over and over.

05:13 10 Q. When you say your spreadsheets,  
11 the spreadsheets we looked at today?

12 A. The tracking spreadsheet with --  
13 that I keep.

14 Q. Did you know there's not a  
15 single instance, not a single instance in  
16 those spreadsheets where you report, or any  
17 of your peers, that a practice switched from  
18 ContextMedia -- ContextMedia to HAN (sic)  
19 because of anything false or misleading that  
05:13 20 ContextMedia said to the practice?

21 MR. BERNAY: Object. You can  
22 answer.

23 A. Those words aren't in our  
24 comments.

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1           Q.     But your comments don't say the  
2 practice said it switched because  
3 ContextMedia said blank and blank was false  
4 or misleading, those comments don't say that,  
5 do they?

6                   MR. BERNAY: Objection. You can  
7 answer.

8           A.     The comments say what the  
9 practice told us, which was inaccurate  
10 information that they received from  
11 ContextMedia.

12           Q.     Like that HAN doesn't have  
13 sound, was that inaccurate information?

14           A.     Yes.

15           Q.     That HAN does not have video,  
16 that was inaccurate?

17           A.     At the time that was not  
18 inaccurate.

19           Q.     That HAN's loop was shorter than  
20 ContextMedia, that was inaccurate?

21           A.     That was not inaccurate.

22           Q.     That HAN didn't have recipes,  
23 was that inaccurate?

24           A.     That was not inaccurate.

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1           Q.       In fact, your comments report  
2 practices telling you lots and lots of  
3 reasons that they switched from ContextMedia  
4 to HAN (sic) that were not inaccurate  
5 information, right?

6           A.       There are reasons.

7           Q.       And, in fact, if you took all of  
8 the comments in there as to why practices  
9 switched from ContextMedia to HAN (sic) and  
05:14 10 put on one side those reasons that were  
11 legitimate, fair competition reasons and on  
12 the other side reasons where you believe  
13 ContextMedia said something false and  
14 misleading to HAN, you know there would be a  
15 lot more reasons on the first side than the  
16 other?

17          A.       I'm sorry?

18          Q.       Never mind. Exhibit 26, your  
19 counsel asked you what that Post-it note  
05:15 20 said, that, "Returned with our equipment," do  
21 you see that?

22          A.       Yes.

23          Q.       You have no earthly idea what  
24 that means, do you?

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1                   MR. BERNAY: Objection. You can  
2 answer.

3                   A. There's a comment in CMS  
4 regarding this, this paperwork that came.

5                   Q. Had you seen this comment,  
6 returned with the equipment, before today?

7                   A. I hadn't seen the comment, but  
8 I've seen this document as it came back in a  
9 box.

05:15 10                  Q. Do you know for a fact that, as  
11 you sit here, that this was, in fact,  
12 returned with HAN's equipment?

13                  A. Yes.

14                  Q. Because you opened the box and  
15 saw the HAN equipment and then pulled this  
16 out of the box, you personally?

17                  A. I did not personally.

18                  Q. Did you see anybody else do it?

19                  A. No.

05:16 20                  Q. You weren't standing there?

21                  A. Hm-mm.

22                  Q. You started off in response to  
23 some of your counsel's questions agreeing  
24 with him that the comments recorded in your

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1      spreadsheets were one of many reasons and  
2      that they were incomplete and that practices  
3      omit information, do you recall that  
4      testimony?

5                 A.        (Witness nods head  
6      affirmatively.)

7                 Q.        The only reasons that you know  
8      about as to why Context -- why practices  
9      switched from ContextMedia -- from HAN to  
05:16 10     ContextMedia are the ones that you and your  
11    peers recorded in the comments box, right?

12                MR. BERNAY: Objection. I know  
13    it's getting late, but getting a little  
14    argumentative here.

15                Q.        Do you understand the question?

16                A.        Can you ask the question again,  
17    I guess.

18                Q.        Yeah. The reasons you and your  
19    peers know as to why practices tell you they  
05:17 20    switched from HAN to ContextMedia are the  
21    reasons you report in the notes and the CMS  
22    database, right?

23                A.        Those are some of the reasons,  
24    but we don't have -- we don't have the

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1 opportunity to have a long conversation with  
2 these office managers.

3 Q. But based upon the conversations  
4 you have, they give you certain reasons,  
5 right?

6 A. They give us some of the  
7 reasons, yes.

8 Q. Well, do they ever tell you, Ms.  
9 Smith, I'm going to give you some of the  
05:17 10 reasons, but I'm not going to tell you the  
11 others? Have you ever had a conversation  
12 like that?

13 A. No.

14 Q. So to the best of your  
15 knowledge, they are responding to your  
16 questions and providing reasons, right?

17 A. Correct.

18 Q. And the notion that they're  
19 omitting information from you is rank  
05:17 20 speculation, right?

21 MR. BERNAY: Objection. You can  
22 answer.

23 A. Yes.

24 Q. The best knowledge HAN

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1     possesses, the very best knowledge, the most  
2     accurate, complete knowledge that HAN  
3     possesses as to why practices switch from HAN  
4     to ContextMedia is included by you and your  
5     peers in these databases, right?

6                 A.     Yes.

7                 Q.     And I think you told me earlier  
8     today, you take pride in your job in making  
9     sure that you write down and record in the  
05:18 10    database things that are of importance,  
11    right?

12                A.     Correct.

13                Q.     Things that are of significance,  
14    right?

15                A.     Correct.

16                Q.     It wouldn't be consistent with  
17     your job responsibilities to purposely omit  
18     things that were important or significant,  
19    would it?

05:18 20               A.     Correct.

21                Q.     Now, in response to one of your  
22     counsel's questions, you also indicated that,  
23     during this conversation, you're not asking  
24     the practices what they were told by

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## 1 ContextMedia?

2 A. I'm sorry, say that again.

3 Q. I heard you say -- agree with  
4 one of your counsel's questions that during  
5 these conversations you don't ask the  
6 practice what ContextMedia said to the  
7 practice?

8 A. No.

9 MR. BERNAY: I'm not sure if

05:19 | 10 that's exactly what I asked, but.

11 A. That's --

12 Q. Well, let's go at it  
13 differently. Your notes, and we can go back  
14 to them if you want to --

15                   A.     Early on we did not ask those  
16    questions.

17 Q. But at some point you started  
18 routinely asking, did they represent  
19 themselves to be HAN, did they say they were  
20 authorized to remove the equipment, what else  
21 did they say about HAN, right?

22 A. Correct.

Q. You said, and agreed with  
another one of your counsel's questions, that

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1       you believe that all practices that switched  
2       had been told by ContextMedia that  
3       ContextMedia had the authorization to remove  
4       the equipment, do you recall that?

5           A.     I'm sorry, can you say that  
6       again?

7           Q.     You testified and agreeing to  
8       one of your counsel's questions that you  
9       believe all of the practices that switched  
05:20 10      from HAN to ContextMedia had been told by  
11     ContextMedia that ContextMedia had the  
12     authority to remove HAN's equipment?

13          A.     Some of the practices.

14          Q.     Some were, right?

15          A.     Right.

16          Q.     And, in fact, you recorded that  
17       when that happened, didn't you?

18          A.     Yes.

19          Q.     You said when the heartbeat  
05:20 20     ceases to exist, that it's your policy to  
21     wait seven days and then make a call, right?

22          A.     Correct.

23          Q.     Can you imagine a practice being  
24     frustrated that the screen was dark for seven

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1 days before hearing a peep?

2 A. Just because they lost a  
3 heartbeat doesn't mean their program is  
4 black.

5 Q. There's one way to find out,  
6 though, right?

7 A. I mean, typically it's not, and  
8 that's why we wait seven days.

9 Q. What do you expect to happen in  
10 that seven days?

11 A. The computer to connect again.

12 Q. I see.

13 A. Could have been a fax issue or a  
14 number of other things.

15 MR. O'BRIEN: I have nothing  
16 further.

17 MR. BERNAY: I have nothing  
18 further.

19

20

---

LORI SMITH

21

\* \* \*

22

(DEPOSITION CONCLUDED AT 5:20 p.m.)

23

\* \* \*

24

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1                   C E R T I F I C A T E  
2

3                 STATE OF OHIO  
4                 : SS  
5                 COUNTY OF CLERMONT

6                 I, ANN M. BELMONT, RPR, the  
7                 undersigned, a duly qualified notary public  
8                 within and for the State of Ohio, do hereby  
9                 certify that LORI SMITH was by me first duly  
10                sworn to depose the truth and nothing but the  
11                truth; foregoing is the deposition given at  
12                said time and place by said witness;  
13                deposition was taken pursuant to stipulations  
14                hereinbefore set forth; deposition was taken  
15                by me in stenotype and transcribed by me by  
16                means of computer; deposition was provided to  
17                witness for examination and signature outside  
18                the presence of the Notary Public. I am  
19                neither a relative of any of the parties or  
20                any of their counsel; I am not, nor is the  
21                court reporting firm with which I am  
22                affiliated, under a contract as defined in  
23                Civil Rule 28(D) and have no financial  
24                interest in the result of this action.

25                IN WITNESS WHEREOF, I have hereunto set  
26                my hand and official seal of office at  
27                Cincinnati, Ohio this 24th day of March,  
28                2014.

29  
30                My commission expires: ANN M. BELMONT, RPR  
31                December 4, 2015 Notary Public - State of Ohio

32  
33  
34  
35  
36  
37  
38

A circular notary seal with a yellow center and a black border. The border contains the text "NOTARY PUBLIC" at the top and "State of Ohio" at the bottom. The center features a sun-like design with rays.

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